

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

[LB250 LB255 LB259 LB295]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 8, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB295, LB259, LB250, and LB255. Senators present: Deb Fischer, Chairperson; Galen Hadley, Vice Chairperson; Kathy Campbell; Annette Dubas; Charlie Janssen; Scott Lautenbaugh; LeRoy Louden; and Scott Price. Senators absent: None. [LB295]

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Deb Fischer, I am the Chair of the committee and I am the senator from Valentine representing the 43rd District. I'd like to begin with introductions of my committee for you. On my far right is Senator Scott Price from Bellevue. Next we have Senator Kathy Campbell from Lincoln. Next we have the Vice Chair of the committee, Senator Galen Hadley from Kearney. On my immediate right is our committee counsel, Mr. Dustin Vaughan. On my immediate left is our committee clerk, Miss Laurie Vollertsen. Next we have Senator Annette Dubas, she is from Fullerton. And on my far left is Senator LeRoy Louden from Ellsworth. We have two committee members who aren't present right now, Senator Charlie Janssen from Fremont, and Senator Scott Lautenbaugh from Omaha. They will be coming in and you might see other members of the committee leaving because they're introducing bills in other committees. So please don't take offense if you see members coming and going at this time. We also have two pages. We have Crystal Scholl who is from Lincoln, and Kyle Johnson who is from Sutton. If you have any materials or need help with anything, please contact the pages and they will be happy to distribute those materials for you. We will be hearing the bills in the order that they are listed on the agenda. Those wishing to testify on a bill need to come to the front of the room and be ready to testify as soon as someone finishes testifying in order that we can keep the hearing moving please. I would ask that you sign a yellow sign-in sheet at the on-deck table and have that ready to hand into our committee clerk before you testify. We use a computerized transcription program and so it's very important that you state and also spell your name for the transcribers. For the record I would ask that you spell your name, keep your testimony concise and try not to repeat what someone else has said. We will be using the light system. The committee counsel runs the light system. I allow three minutes for your testimony. You'll have a yellow light come on at that time, I would ask that you please try to wrap up your testimony. Again, if you do not want to testify, but you want to voice your support or your opposition to a bill, you can indicate so at the sign-in sheet at that on-deck table. That will become a part of the official record of the hearing. However, if you want to be listed on our official committee statement, you must come forward, you need to come up to the testifier table, state your name and your position on the bill. Again, that is in order to be listed on that committee statement. We also take written testimony and you can turn that in at my office at any time and that will be part of the official record. At this time I would ask that you please turn off your cell phones. In

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

this committee we do not allow cell phone use and that also means no texting. With that I will open the hearing on LB295. I see Senator Lathrop is here, so welcome, Senator Lathrop. And we've also been joined by Senator Charlie Janssen of Fremont. And good afternoon.

SENATOR LATHROP: Good afternoon, Madam Chairperson. Steve Lathrop, State Senator from District 12, that's L-a-t-h-r-o-p. I'm here today to introduce LB295. This bill follows a couple that I've introduced the last two years to look at the many issues related to the towing of vehicles from private lots. Last year's bill focused solely on the ability of towing companies to charge reasonable towing and storage fees. That bill would have defined reasonable, not by allowing a fee to be charged that was higher than the contracted rate with the local city or county. During that hearing the idea of involving the Public Service Commission in the determination was discussed and more closely examined last interim by the commission, committee legal counsel, and my office. LB295 would change state law to allow the Public Service Commission to receive complaints regarding the reasonableness of towing and storage fees. Under the bill, once a written complaint is received by the commission, the commission would serve a copy of the complaint to a towing business who will then have 15 days to respond to the complaint. The commission may then hold a hearing on the complaint and the person storing or towing the vehicle will have the burden of proving that the charges were reasonable. The criteria for the commission to use in determining the reasonableness of the towing charges and storage charges are included in the bill. If the commission finds the charges are reasonable, they would order that they be paid by the complainant. If they find that they were not reasonable, they would be able to adjust the charges owed by the complainant and assess a civil penalty against the respondent or both. As I've said before, the towing company has the lien on your car and there is nothing to stop them from setting an exorbitant fee. I'll go off this script at this point because I do want to make the point that I've made before because we do have a few new members and I want to talk about what we've done in the interim. My concern over this issue is a function of the fact that the way the state law is written right now, if a vehicle is towed off a private lot, the law gives to the towing company a lien. They don't have to give you your car back until you pay them what they want. The statute says they can charge no more than reasonable, but what is reasonable is not defined in the statute and it has led to charges which I think are beyond reasonable. And I've been here a few times and we've had an interim hearing and you've been very patient with me, Senator Fischer, and members of the committee, but my concern is, when you're charging \$250 for example to tow somebody from the Qwest Center less than a mile away that something isn't right. And we now have in process, and I think this is a very good process, and I'm pleased with the bill and I really want to thank the Chair and Dusty for his work on this subject matter during the interim, as well as Mike Hybl over at Public Service Commission. I think it's a great process and it's fair. There will be a hearing and we won't have to try to establish a formula today for what's reasonable. We'll just let the Public Service Commission identify the unreasonable charges and make adjustments to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

those. So I would be happy to answer any questions? [LB295]

SENATOR FISCHER: Thank you, Senator Lathrop. I'd like to note for the record, we've been joined by Senator Scott Lautenbaugh of Omaha. Are there any questions for Senator Lathrop? Senator Louden. [LB295]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. Well, Senator Lathrop, as I look at this, now it says that the commission can find the charges reasonable, and the law said they shall order the complainant to pay the charges. What's in here...I guess I need help with this, where does it say that they have any authority for any penalty or can somebody tell them...? [LB295]

SENATOR LATHROP: Yes, on page 3, line 8 through 12, it says if they find the charges were reasonable, the commission can order the complainant, that would be the guy who had his car towed, to pay the charges. If the commission finds the charges were not reasonable, the commission may adjust the charges owed by the complainant and assess a civil penalty against the respondent or both. [LB295]

SENATOR LOUDEN: Now is there some place that the Public Service Commission has authority to do that in statute now? [LB295]

SENATOR LATHROP: Well right here, right here, this would be the authority to review and then assess or make a determination as to whether the charges were reasonable or not. [LB295]

SENATOR LOUDEN: Okay. But this is enough to put in there they can charge them and tell them, I guess, order them to pay a fee or something like that. [LB295]

SENATOR LATHROP: Yes. And I would...I would...I guess...I see we have members of the Public Service Commission here and I would defer to them on the question of how do they usually do that, because it's not an area that I practice and so I'm not familiar with that. [LB295]

SENATOR LOUDEN: Well I guess what I'm thinking of is when you have these...what do you call these other courts nowadays, where the court just renders a judgment and it's up to you to go collect the judgment. That is what I'm wondering if that is what happens here if there is a complaint and they have to pay these charges and that's all you get is sort of judgment type of relief for that? [LB295]

SENATOR LATHROP: That's a great question. And I...this was...this...the language in this bill, and now I'm not blaming anybody because I'm going to give them credit, I think it was worked on with Doug Koebernick of my office, legal counsel for this committee and somebody from the Public Service Commission, so it would be my understanding

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

that the process in this bill is workable. But if you have questions about how the Public Service Commission would actually carry out the terms of the bill, I think someone from the PSC will be here to testify. [LB295]

SENATOR LOUDEN: Okay. Thank you. [LB295]

SENATOR FISCHER: Thank you, Senator Louden. Senator Janssen. [LB295]

SENATOR JANSSEN: Thank you, Chairman Fischer. Thank you, Senator Lathrop. If I were to engage with maybe you or a different attorney on an hourly fee, which we would agree on perhaps prior to the services being engaged, which I think is a difference here that we're talking about. But in the case of, I get the bill from you, well, I don't think you gave me two hours' worth of service. What's my...where do I go to complain for that? [LB295]

SENATOR LATHROP: I suppose you go to the Bar Association. That would be... [LB295]

SENATOR JANSSEN: Do they have any standing? [LB295]

SENATOR LATHROP: Yeah, they do have a committee that...not with statutory authority to make anybody do anything, but they do have a committee that adjusts fees and works with people who have a complaint about fees with their lawyer. [LB295]

SENATOR JANSSEN: Would that be binding towards you then? Because the bar doesn't...the Bar Association really has nothing to do with your licensing do they? [LB295]

SENATOR LATHROP: Yeah. [LB295]

SENATOR JANSSEN: Or do they? [LB295]

SENATOR LATHROP: Yeah. Well, yeah, I have to be a member of the Bar Association in order to be a licensed lawyer in the state of Nebraska. [LB295]

SENATOR JANSSEN: You do? Right now, at present? [LB295]

SENATOR LATHROP: Right, Senator Lautenbaugh? Yeah, for now. No, Senator Lautenbaugh has a bill on that subject. [LB295]

SENATOR JANSSEN: I'm familiar with it. And I'm just...as you know from previous times, this bill came here, anytime we start infringing upon private business, it kind of raises my ire a little bit. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR LATHROP: Yeah, and I appreciate that, I really do. And I appreciate...because we've had that conversation before. And my answer still is, when you tell somebody they can take your car and they won't give it back to you because we put into statute a process that let's them keep it until I pay whatever they want. I think we need a process and that's all this is. It doesn't say what their rates should be or has to be, but it's not a free market when they pick your car up. [LB295]

SENATOR JANSSEN: Would the Better Business Bureau, perhaps, work on that, or even myself retaining an attorney also help with that? [LB295]

SENATOR LATHROP: The problem with the Better Business Bureau is that it assumes that somebody is going to call them before they get towed and there's nothing about this that is a consensual...or something that people enter into as a contract or an agreement, it just happens. And then they have a lien on your car and they don't give it back. [LB295]

SENATOR JANSSEN: Is it sort of a fraud then type of situation because then the Attorney General has a fraud... [LB295]

SENATOR LATHROP: Well, you know, I'm not going to...I'm not going to suggest, Senator Janssen, that people are deliberately gouging. They may...they may very well, honest, good people in business for themselves be charging \$300, for example, to tow a car ten blocks and take five minutes to do it. If they think that's reasonable, they may feel like under the circumstances that's a reasonable charge, but me, the guy who had my car towed, ought to have some forum where I say, wait a minute, \$300 is over the top. You know, and...and... [LB295]

SENATOR JANSSEN: Okay. I totally understand that. [LB295]

SENATOR LATHROP: And so we have...we have set up a process for somebody to be sort of an arbiter of that question. [LB295]

SENATOR JANSSEN: But you agree, well, you don't have to agree, but on a day like today, I think I drove about ten blocks today and it's -7, I don't know what the windchill is, I would think my services today would probably be worth a little bit more to get somebody in and to hook up and tow a truck ten blocks and I don't think the Public Service Commission takes that into consideration when you say ten blocks, it could be 75 degrees and a perfect day. It could be 75 degrees and a Husker game day, you could have to pay somebody overtime to come in, in frigid conditions or on the weekend. So those are concerns I have when we start to enter into regulating private industry with a public entity. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR LATHROP: Right. And I appreciate that. My answer to that would be that we are...we did not set out a formula that is rigid, that says you'll charge no more than \$30 to hook up and 25 cents a mile. That would be rigid and that wouldn't account for other things, circumstances. Nor do I think the Public Service Commission would err on the side of finding something unreasonable that if you're pretty close to what is reasonable, I think it passes muster. [LB295]

SENATOR JANSSEN: Thank you, Senator Lathrop. [LB295]

SENATOR FISCHER: Thank you, Senator Janssen. Senator Dubas. [LB295]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Senator Lathrop, and being a new member to the committee, I am trying to get up to speed on this particular issue and you raised in your opening that it is in statute about a reasonable charge and reasonable is what? I see you have defined in the bill what would go into making that reasonable determination. I guess I'm just wondering where these...are these definitions for reasonable? Are those in other areas of statute or is this something that you came up with specifically for this bill? [LB295]

SENATOR LATHROP: No, they are not, as far as I know. But they're, I think, kind of common things when you look at whether they required any special equipment. In the other hearings that we've had, Ms. Hitz from York was here and testified about how sometimes they have, when you're talking about towing companies, sometimes it's a great big, great big piece of equipment towing a semi and so it really is difficult to put a hard fast rule in here that doesn't allow for some of the individual circumstances of a particular tow. And that, I think, is what we tried to do with the afore criteria here. [LB295]

SENATOR DUBAS: So this basically has come from past bills that have been introduced, conversations of the past. [LB295]

SENATOR LATHROP: It has come from us listening to people with thoughtful ideas like Ms. Hitz. [LB295]

SENATOR DUBAS: Thank you. [LB295]

SENATOR FISCHER: Senator Price. [LB295]

SENATOR PRICE: Senator Fischer, thank you very much. Senator Lathrop, a couple of questions. Again, being the new person, but I'm learning quickly here from the conversation so I'll try not to rehash it. When we talk about the circumstances, you in paragraph (4), subparagraph (a), you talk about specialized equipment, process and training which are fairly specific; and then in the following (b), (c), and (d), you give it a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

little bit more of what other people do, so you kind of give a more nebulous or inclusive capability, but I see time isn't really articulated in that way, you know, when it...the time it takes to get a place, the time it takes to do the job, so I just wonder about where you see time, you know, when you look at...whether it's the time of day, time to get there, or the level of effort or time involved, those conditions, where is time seen in this paragraph? [LB295]

SENATOR LATHROP: I would say that sometimes people charge by the time and sometimes they charge by the mile. It would be like if we were trying to compare somebody who is driving a truck, the measure for the value of their services typically is distance right? You get 25 cents a mile, or whatever it is, whatever the standard is for the towing industry, we look at that in Section (b). And if that includes time, if it includes a hookup charge, if it includes a charge for a distance like a dollar a mile or something like that, that would be what would be included in (b). [LB295]

SENATOR PRICE: Okay, because I was also thinking time as...there's a difference from getting called at 3:00 in the afternoon and getting called at 10:30 at night or 2:00 in the morning for...so you know, you're pulling...so there are different rates, there is a differential, you know, we have lots of differentials in how we do things. And that's why I'm thinking there is a value of time and a component of the pricing. But I see what you're saying there and the next question that I move upon is the most, and again, educate me, and that is, on page 3, paragraph (2) there, we put the burden on the people doing the towing to prove themselves instead of on the other party. I mean, if one party has to prove it, what we're saying here is, you have to prove to me your rates are good, instead of the person complaining said why they're bad. How does that play out? I mean, why do we... [LB295]

SENATOR LATHROP: Yes, it does. [LB295]

SENATOR PRICE: What's that? [LB295]

SENATOR LATHROP: Yes it does. That's how I read that paragraph as well. [LB295]

SENATOR PRICE: Right. So why is we pick one side that has to do the proving instead of the guy complaining? [LB295]

SENATOR LATHROP: I don't know. I mean we could do... [LB295]

SENATOR PRICE: Because you had to pick a side. Because you had to pick a side, I understand. [LB295]

SENATOR LATHROP: You had to pick a side. And I guess if they get a lien then they ought have to prove it is a reasonable charge. I don't think that's a big deal to me either,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

frankly, whether I as the person who had my car towed or whether the tower has the burden of proof. I don't think, really, if we could magically determine what reasonable is, in a particular case it is a hundred dollars, all right? Whether they charge \$95, \$100, \$110, I don't think...I think reasonable is really more about being unreasonable like so if the language in paragraph (2) said that the complainant had to prove that the charge was unreasonable, then there's more of a benefit of a doubt to the tower and I don't have a problem with that. Because it's not the close case that I'm concerned about, it's the one where the charge would be by anybody's standard \$100 and they're charging them \$300. [LB295]

SENATOR PRICE: Okay. Thanks. [LB295]

SENATOR FISCHER: I would think we could ask the Public Service Commission when they come up. I hope they come up on this bill in a neutral capacity at least, ask them how they handle their hearings on other issues too and who has that...I guess, the burden of proof and how they do that and why that language was chosen. So Senator Hadley. [LB295]

SENATOR HADLEY: Senator Fischer. Senator Lathrop, thank you. I have the paragraph (3) on page 3, I would assume that the person has to pay to get their car out and I just wondered if that paragraph needs maybe to be rewritten a little because it talks about... [LB295]

SENATOR LATHROP: We have in there...good question...we have in there that a provision that says that if you paid it doesn't preclude you from going through this process. [LB295]

SENATOR HADLEY: Right. [LB295]

SENATOR LATHROP: So we've already recognized...and I thought the same thing, do we need to say that they'll be given a refund to the extent they've been overpaid? [LB295]

SENATOR HADLEY: Yeah, that's what I wondered about, a refund or...or...we say that if the commission finds that the charges were reasonable, the commission shall order the complainant to pay the charges, I would assume they have already paid them. [LB295]

SENATOR LATHROP: I'm positive they have because no one is going to give them the car and say I'll see you at the PSC. [LB295]

SENATOR HADLEY: That's right. So I was just wondering if that paragraph might need just a little tweaking. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR LATHROP: I think that would be reasonable. I have to say that Mr. Vaughan and the people over at the Public Service Commission were very much involved in establishing this language and there may have been a PSC standard operating procedure reason for the language that we have and I'm a little reluctant to commit to a change, but that seems reasonable to me. [LB295]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Janssen. [LB295]

SENATOR JANSSEN: Thank you again, Chairman Fischer. Senator Lathrop, I'm sorry I didn't ask this earlier, and Senator Price kind of jogged my memory on this through his questioning. When you talk about, you know, where you pick a side, I guess you have to pick a side one way or the other. In talking about that is, so we chose the side of the person that got towed in this situation, under his analogy, or the way the bill reads actually. [LB295]

SENATOR LATHROP: What we've done is established who has the burden of proof. [LB295]

SENATOR JANSSEN: Right. But in this case, how does...and you said because the lien is given to the towing company in this situation. And the people that are towed, did they do nothing wrong in the first place? Were they towed out of a legal parking spot? Were they towed...did they not do a wrong first? [LB295]

SENATOR LATHROP: They might have been doing exactly nothing wrong or they might have been doing something wrong. But what the towing company doesn't get to do is they don't get to impose a penalty because all penalties in the state of Nebraska should first have a trial, or after a trial and if there is going to be a penalty imposed the constitution requires that the money go to the school districts and not to a private tow company. So, clearly, most of these people...I wouldn't defend these people for what they do. They go into a parking lot that says don't park here and they do it. They deserve to be towed. And that's ridiculously inconvenient if it happens to you, but what shouldn't happen is that we then turn the tow company into a county court where they're going to impose \$100 fine just because we've given them a lien. [LB295]

SENATOR JANSSEN: Is it a fine or is it a storage cost? [LB295]

SENATOR LATHROP: They can charge, and should be able to charge a reasonable amount for towing a vehicle and for storing it. But they shouldn't charge more than that. That's the only point with the bill. [LB295]

SENATOR JANSSEN: What's reasonable? [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR LATHROP: Well that's what this is about. And we think we have the criteria. And as I said, I don't have any trouble, and in answer to Senator Price's question, I don't have any problem making the burden on the complainant, the person who had his car towed, to come in and show that the charge was unreasonable. I don't have a problem with that, but what I don't know is this, when they established that language and put that paragraph in there if they have a standard operating procedure in the Public Service Commission that accounts for why they're doing that. [LB295]

SENATOR JANSSEN: I just get a little bit, when you talk about what is reasonable and we start throwing around some analogies that we have, you know, not all tows are created equal, if you will. And you have alluded to that and I have heard that previously. If I go to the doctor for a 15-minute exam, maybe my family practitioner is not the same as going to a highly esteemed brain surgeon, but they are both doctors. I mean there is a...a tow is not always a tow; a doctor visit is not always a doctor visit, an attorney's visit is not always an attorney's visit, there's different fees that are set based on that person's experience or what they did or the scope of practice that they are in, even though sometimes it's just a wide variety. [LB295]

SENATOR LATHROP: Yeah, I would agree that a tow is not a tow and we learned that from Ms. Hitz the last time she was here. If you're towing a semi, that's not the same as towing a Volkswagen. But I think that's in the criteria that the Public Service Commission would use to determine the reasonableness of the charge. [LB295]

SENATOR JANSSEN: I just...I guess I wonder if the...if this is under the Public Service Commission's purview. It could be, I suppose, and if we make it a law, it is, with 25 votes it is. [LB295]

SENATOR LATHROP: Well they do the cab rates and all kinds of different things over there and establish fair rates for all kinds of things that people have monopolies on and in a manner of speaking, once you take the car and you have a lien on it, you have a monopoly. [LB295]

SENATOR FISCHER: Again, I think it...on the neutral testimony, I think it will be helpful to ask those questions of the Public Service Commission because they do determine that reasonableness on other things as, Senator Lathrop, you pointed out on cab fares, there is a cap, I believe, but they are able to set that. I think Senator Lautenbaugh had a question, but he left us. Are there other questions? Senator Louden. [LB295]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. Senator Lathrop, not to labor the issue, but as they had the discussion on who was to blame here, as I look at part of this, it says the owner has a process of filing a complaint with the Public Service Commission. Should there be a fee or is there a fee someplace in statute? I mean, if you file with the TERC Committee, why it's in statute, there is a filing fee. Should there

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

be a filing fee in this statute here as we're discussing this, or has anyone brought that?
[LB295]

SENATOR LATHROP: I would leave that to...I'd defer on that question to someone from the Public Service Commission. I don't know when they look at this process if they think they need a filing fee. If they think they will only have a few of these kind of complaints or if that...if there's already a portion in statute not found in this bill that says when you file a complaint they will pay a fee. [LB295]

SENATOR LOUDEN: Well I was looking at if there isn't fee filed, somebody gets their car towed, they just automatically file a complaint and kind of drags this all on and that sort of thing. That was the reason that...if there is a fee involved, then they might be...have to think about it a little bit if it is reasonable, a reasonable charge, that's what I was wondering on that. Okay. [LB295]

SENATOR LATHROP: And I would say maybe the people from the Public Service Commission would enlighten us on that. So I don't really know. [LB295]

SENATOR LOUDEN: Okay. Thank you. [LB295]

SENATOR FISCHER: Other questions? Senator Lautenbaugh. [LB295]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. Thank you, Senator Lathrop, but I...this isn't much...I don't want to be judgmental and say better bill, but I like this bill more than the last couple of years worth of bills on this topic. But...and this...what my question may get is something that is either an argument for or against doing this and I'll confess up front that I am a towing survivor. Last year my car was towed from outside the Cornhusker one morning and I had to go get it from the city impound lot and I didn't feel like I was gouged. I mean, but I assume they have some agreement with the city and that is not what we're talking about here. [LB295]

SENATOR LATHROP: The city council fixes that fee. [LB295]

SENATOR LAUTENBAUGH: Okay. So that was my experience and I'm assuming that is probably the most common experience, so my question is, and I don't know how you would know for sure, how many predatory incidents are we really talking about? Is it common? Is it a blue moon? Because I mean it can cut either way is why I don't think we should do this. [LB295]

SENATOR LATHROP: No, I don't think it is uncommon. First of all, let me say, if you tow somebody off the city streets, the city council has already been through a bidding process to determine who the lowest bidder is going to be and I don't have a quarrel with whoever that is and whatever they're charging. As it relates to how prevalent is this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

problem? I can tell you that the subject came to me with students at UNL who were frequently towed from apartments and places like that and then charged a great deal for...what they considered to be a great deal for the tow. [LB295]

SENATOR LAUTENBAUGH: But beyond that, I don't know how you would know, so I'm asking you to answer probably an unanswerable. [LB295]

SENATOR LATHROP: You may be asking the unanswerable, I suppose the people from the tow companies might have a thought on it. But they also have an interest in the subject matter. [LB295]

SENATOR LAUTENBAUGH: I mean I can see that if it is not a big deal, if it doesn't happen very often it wouldn't be that big of a burden on the Public Service Commission to do it. [LB295]

SENATOR LATHROP: Right. [LB295]

SENATOR LAUTENBAUGH: If it is a big deal, it might be. I don't know, it cuts both ways, I guess. [LB295]

SENATOR LATHROP: My guess is, this is just me thinking out loud, this bill passes, it becomes the law, they run two or three cases through the Public Service Commission and once you've been there, you go, okay, it's time to quit charging \$300. It looks like the Public Service Commission is going to be okay with 180 or whatever the number is and you'll know what you can reasonably get by with, with their process. [LB295]

SENATOR LAUTENBAUGH: Fair enough. [LB295]

SENATOR FISCHER: Other questions? I see none. Thank you very much. First proponent for the bill please. Good afternoon. [LB295]

JOANNE HITZ: Good afternoon. I am Joanne Hitz, spelled J-o-a-n-n-e, the last name H-i-t-z. I own Hitz Towing in York and I also am the president of the Professional Towing Association of Nebraska. I don't want to come back here any more, so we are willing to get on board with Senator Lathrop. (Laughter) Not that I want to be outside working today, because I'd much rather be here. After some thought, and trying to understand where he is coming from, I guess we can appreciate what he is trying to accomplish. Anything that can raise the perceived perception of this occupation is good. You know, if there is people out there degrading what we're doing, then we feel they need to be held accountable as well. So with that said, we're on board with pretty much everything he has proposed. He has allowed for, you know there is different types of towing which he...which we have addressed. There's, you know, it's not just cookie cutter, this is what a tow fee is, this is what it is going to cost you. I mean, obviously,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

whatever is running up and down the highway can be left anywhere and needs to be towed irregardless of the size and nature of what it is. Probably, you know, one of my concerns is, where is the responsibility of the property owner in any this? Because it does seem like a lot of the burden falls back onto the tower. The tower didn't instigate this, per se. They usually don't tow unless they have been authorized by somebody that manages that property, so where is their responsibility in this situation? We're not opposed to the Public Service Commission. The only thing I requested is if the Public Service Commission is going to be involved, why wouldn't you register if you are going to be involved in private property towing, why wouldn't you require that they register with the Public Service Commission for a fee and that way you could document that they have the insurance to be operating, what they are supposed to be doing so they have documentation of the insurance, they would have contact information for the people who are doing the private property towing. So they would be somewhat familiar with the people that are involved in the towing process so they would know who they would get complaints from. If they weren't registered, then to me that would be probably your predatory tower that you wouldn't want to be dealing with. Probably the appeal process is a little bit concerning just not knowing how that will work. So that's just a concern we would have. Probably the only thing that I would disagree with him on is his storage. There was a...you have to notify the last registered owner and the lienholder within 15 days that you've towed their vehicle and he has in here that you cannot assess any storage charges until the owner has been notified. Well, you and I all know that when I hook onto somebody's vehicle I become immediately legally liable for their vehicle. I have cost of equipment, personnel, insurance, it is not free. Even though they don't know that their vehicle has been towed, it is not a free service until they are notified. The property I would place their vehicle on has a cost so that's probably the only thing that Senator Lathrop and I probably disagree on that there would be a towing and storage fee even if the owner doesn't know that their vehicle has been towed. Otherwise, what is going to happen is the base rate of that tow is going to take all of those things into account and so the base rate is actually going to increase which will make it a higher tow initially. Understand what I mean? And the only other thing I thought would be handy for towers would be the notification of the previous owner or the owner of the vehicle or the lienholder is in Nebraska. If it is a currently licensed Nebraska vehicle there is a Web site that towers can access and for an annual fee and then so much a vehicle that they run they can obtain the information of who owns the vehicle if it's Nebraska current registered. If it's out-of-state, or if it's unlicensed, the method for obtaining that information is extremely difficult, if not impossible. So to meet that 15-day criteria is really difficult on some vehicles. That's pretty much all I have. [LB295]

SENATOR FISCHER: Okay. Thank you, Ms. Hitz. Are there any questions? Senator Lautenbaugh. [LB295]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. I have to be honest I was

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

about to stop you from signing in because I thought you should wait for the opponents based upon years gone by. So this isn't really a question, I'm just thanking you and praising Senator Lathrop for the two of you being able to work together and obviously coming to terms on something that's been difficult for a couple of years now. [LB295]

JOANNE HITZ: If you can't beat 'em, you got to join 'em, right? (Laughter) [LB295]

SENATOR LAUTENBAUGH: I'm not sure which way that applies. Okay, either way you came together, so that's fine. [LB295]

JOANNE HITZ: Thank you. [LB295]

SENATOR FISCHER: Senator Campbell. [LB295]

SENATOR CAMPBELL: Thank you, Chairman Fischer. In past hearings you've always testified and given great detail and I thought help the committee understand because you do towing of cars on the interstate, is that correct? [LB295]

JOANNE HITZ: Correct. [LB295]

SENATOR CAMPBELL: Do you see any problem with the procedure here that for someone from out of state? [LB295]

JOANNE HITZ: Yes. [LB295]

SENATOR CAMPBELL: Is there some way that we could address that? [LB295]

JOANNE HITZ: As I said, I don't know how the appeal process is going to work so I'm wondering...probably the Public Service Commission can answer that, because I do see a problem with, you know, you have a private property issue in Scottsbluff, are they going to have to come to Lincoln to the Public Service Commission? Are both parties going to have to come here? Say someone from Wyoming came to Scottsbluff for a sporting event, are they going to have to come to Lincoln to resolve that? I don't know how that process is going to work. [LB295]

SENATOR CAMPBELL: I was also thinking about those people who come from Gering to a Nebraska football game. [LB295]

JOANNE HITZ: Correct. [LB295]

SENATOR CAMPBELL: Okay, I'll ask my question later. [LB295]

SENATOR FISCHER: Senator Janssen. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR JANSSEN: Thank you, Chairman Fischer. Like Senator Lautenbaugh, I was also a little bit alarmed when I saw you coming forward and the proponents, although you brought up some issues that you have with the bill. Are you comfortable speaking for everybody when you say...I guess, are you comfortable having your private business now regulated by the Public Service Commission? Because if you can't beat 'em, you can't join 'em, I understand that, but you were beating them. So I'm just kind of curious why you would throw your private business. And myself as a private business owner, I let the economy, I let my competition kind of drive me. It's always a little bit refreshing to hear that coming. So I just want to hear what tipped the scales and I'm hoping it wasn't true like, oh, we're just tired of coming down here. [LB295]

JOANNE HITZ: Oh, you know, nobody likes to be towed. Even if it's consensual, even if your car broke down today and you had to call me to have your car towed, you wouldn't like it. But we could negotiate it and we would get it done. I much less think about the person who doesn't have that option. They come and their vehicle is removed. So I'm a little bit sympathetic to trying to understand the other side of it. On the other hand I know what it costs to run my business; I know what it costs to have the equipment that I have and I know...I pay the largest...I have the highest liability insurance rate. I can justify my charges. And that's nothing that I need to be ashamed about. [LB295]

SENATOR JANSSEN: Sure, I mean, sure you do. Are you confident that I do? Are you confident that the Public Service Commission does? I mean, I'm not confident that anybody that sits on this committee, or for that matter, anybody in this room has an understanding of my business. Now they may, but I'm not confident of that, just not knowing every member of the elected body. So by choosing to speak as a proponent to have your entire industry now regulated by a public entity I just... [LB295]

JOANNE HITZ: We're only talking about the private property towing though. [LB295]

SENATOR JANSSEN: Well it starts somewhere. [LB295]

JOANNE HITZ: I know. I have concerns. [LB295]

SENATOR JANSSEN: Okay. Thank you. [LB295]

SENATOR FISCHER: Senator Hadley. [LB295]

SENATOR HADLEY: Senator Fischer. Thank you for coming. I was just trying to think, I can see this as a positive for the towing companies also. I can see that once...after you've been to the PSC two or three times and gotten rulings, you have some understanding and I can see handing out a one or two page sheet to every person who comes into pick up their car explaining what your charges are and that you've been to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

the Public Service Commission and it may make it easier for the person to understand why they're being charged X-dollars for the tow versus now most people walk in to think it's completely arbitrary. I get to see this could be a communication process with the person whose car is being towed. So there could be some positive aspects as far as I'm concerned. [LB295]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? I see none. Thank you for coming in today. [LB295]

JOANNE HITZ: Thank you. [LB295]

SENATOR FISCHER: Any other proponents for the bill? Any proponents? Any opponents to the bill? Good afternoon. [LB295]

SARA SCHWARTZTRAUBER: Good afternoon again. I'm Sara Schwartztrauber, S-a-r-a S-c-h-w-a-r-t-z-t-r-a-u-b-e-r. My family owns Capital Towing here in Lincoln. We do have the towing contract for the Lincoln Police Department, as well as the University of Nebraska. We've had it for about 16 years. To compare the price of one tow to another is comparing apples to oranges. They're not close. But because we've gone through this for so many years, I'm going to read you a statement I wrote and be done. Thank you once again for hearing our point of view on the proposed changes to (Section) 60-2410. I'd like to go on record as saying we are opposed to the changes in its entirety. I believe that Senator Lathrop's continuing thoughts are that the towing industry should be regulated by the government due to the fact we are given an automatic lien on a towed, stored vehicle when the owner did not have a choice as to if their vehicle was towed or who towed it. The key word here is choice. The vehicle owner made choices all through the process. First they chose to ignore the posted signage per state law on the property. They chose to park on that property with the knowledge that my company patrols it for illegally parked vehicles. Every property that our company services has signs which clearly state who can park on that property, what hours the rules are enforced, and who will tow the vehicle should they chose to ignore those warnings. Other than posting the maximum possible towing charges on the signs, I'm not sure what else the property owner can do to protect the rights of the person who chose to illegally park on his property. Senator Lathrop has stated a concern that these same vehicle owners have no where to turn if they feel the cost for making an irresponsible choice is unreasonable. The Senator is quoted in the Lincoln Journal Star as saying that a person cannot fight the charges without court involvement. Isn't that what our court system is designed to do? We believe that the laws in Nebraska speak for themselves. Each vehicle owner has the same rights under those laws as any person who believes they have been treated unfairly. They can go to court. (Section) 60-2410.1 protects both the industry as well as the vehicle owner. The law clearly states the tow company has the right to collect from the owner the reasonable charge for towing and storage. The tow company is given protection under this law to collect for

the work we have performed. The vehicle owner has the right to be charged a reasonable amount. What is reasonable for one situation may not be reasonable for another. What is normal charge in Scottsbluff, Nebraska, may be unreasonable in Lincoln. The Senator is again quoted as saying that fees for towing have gone beyond what is reasonable. The issue that I believe everyone in the industry takes with that statement is that no one, including Senator Lathrop, has ever offered to sit down and speak with us as to what it costs to do a tow, how we set our prices, or why we believe they are reasonable. The proposed changes under Nebraska state law are going as far as taking the rights we are given as presently written to charge a reasonable amount for storage. This in turn would necessitate higher towing fees to cover the expenses associated with that tow. Each person would then be paying the same fee for being responsible and picking up their vehicle immediately as the person who chooses to leave it for several days. We believe the responsibility for this determination should come from the court and to put it on the PSC would propose an undue burden on everyone. While this bill would give the PSC the responsibility to determine what is reasonable and what may not be in each individual case, it is my opinion that the PSC will have many more complaints as to the actual towing of the vehicle than the charges for that tow and that will not be their determination to make. If the vehicle owner is unhappy the vehicle was towed to begin with, as well as the charges, will they be expected to file one complaint in a civil court and the other with the PSC? If a vehicle is towed in North Platte and a hearing becomes necessary, will the tow company have to drive to Lincoln to defend their charges? I'm not an attorney, but it's my understanding that if you commit a crime or involved in a civil lawsuit those charges are heard in the county in which it occurred. I believe this is where the responsibility for upholding these laws should lie; in the county where it happened. This is why county courts were established. If a towing company is forced to drive 300 miles to defend themselves, it's going to affect the cost of the tow. We have laws to cover each of these issues. The problem is, no one is enforcing the laws that are already on the books. (Section) 60.1911 makes it illegal to abandon or cause to become an abandoned vehicle, yet in over 20 years in this industry, I have yet to see a vehicle owner cited for abandoning their vehicle. If I take my garbage downtown and put it in an open dumpster that belongs to a business, I can be ticketed for theft of services. But I can put six months worth of my garbage in my car and put it on somebody's property and have no responsibility. I can take that same car and put it on the city street and the city will pay to dispose of it. I don't believe we need more laws. I don't believe we need to change the laws. I believe we need to work towards enforcing the laws that we already have. If the senators feel that additional regulation is needed, let it be on a local level. In the same article, the Senator states that these types of tows have become a significant concern in both Lincoln and Omaha. Omaha has done the homework, enacted legislation on a local level and hopefully solved their issue. We need to let each city do the same. What will solve a problem in Lincoln may create more problems in Kearney. Again, I believe we should enforce the laws that we have and also make the vehicle owners responsible. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR FISCHER: Thank you very much. Are there questions? You referred to that Omaha took care of their own problem there. What did they do? [LB295]

SARA SCHWARTZTRAUBER: They have a city ordinance where they govern the amount they can charge. [LB295]

SENATOR FISCHER: Is that just on city property or also on private property? [LB295]

SARA SCHWARTZTRAUBER: No, it is for nonconsensual tows. [LB295]

SENATOR FISCHER: Do you know what that is? What do they charge? Or what do they allow to be charged? [LB295]

SARA SCHWARTZTRAUBER: It's a whole lot higher than Lincoln, I can tell you that. The maximum fees to be charged by a person performing such a nonconsensual tow shall be \$150 per vehicle towed plus a maximum administration fee of \$25 per vehicle towed and a \$15 per day storage fee. [LB295]

SENATOR FISCHER: How does that compare to what you do in Lincoln when you tow? Is that higher? [LB295]

SARA SCHWARTZTRAUBER: Oh that's much higher than what we get in Lincoln. [LB295]

SENATOR FISCHER: What do you charge a day for storage? [LB295]

SARA SCHWARTZTRAUBER: My charge for a nonconsensual tow is \$17 for a 24-hour period. [LB295]

SENATOR FISCHER: Okay. Have you ever gone to court? [LB295]

SARA SCHWARTZTRAUBER: Have I gone to court? [LB295]

SENATOR FISCHER: Right. You were... [LB295]

SARA SCHWARTZTRAUBER: Absolutely, yes. Yes. [LB295]

SENATOR FISCHER: And how many times? A number of times did people take you to court? [LB295]

SARA SCHWARTZTRAUBER: In 20 years probably 20 times. [LB295]

SENATOR FISCHER: Doesn't it cost quite a bit to have to hire an attorney and go to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

court? [LB295]

SARA SCHWARTZTRAUBER: Yes, ma'am. Yes, ma'am. Don't get me wrong, sometimes we just go to Small Claims Court and that doesn't cost. [LB295]

SENATOR FISCHER: And do you need an attorney then for small claims? [LB295]

SARA SCHWARTZTRAUBER: No, ma'am, no. [LB295]

SENATOR FISCHER: Okay. Do you think you would need an attorney to go to the Public Service Commission? [LB295]

SARA SCHWARTZTRAUBER: I would hope not. My problem with the Public Service Commission is, honestly, I don't think they're going to see a lot of complaints on the pricing. They're either going to see very few or they're going to be overwhelmed because everybody that gets their car towed, if we hand them a paper saying they have a right to file it, they're going to file it. They're going to see hundreds of them in a year. But I believe they're going to see many, many more of whether the car should have been towed to begin with. The other problem that I have with the Public Service Commission is it states that they can levy a penalty. I find it difficult to believe they can level a penalty against me for something I didn't know I was doing wrong. If I charge a vehicle owner what I believe is a reasonable charge and the Public Service Commission decides it wasn't and they can penalize me for something I believed in, the second or third time we're there, maybe, because then you've been put on notice. But how can they penalize me for something I didn't know I was doing wrong? [LB295]

SENATOR FISCHER: In any of the court cases that you were taken to court for, I assume by somebody who didn't like what you charged them, were any penalties levied on you or only the cost? [LB295]

SARA SCHWARTZTRAUBER: Sure. I've never lost one. [LB295]

SENATOR FISCHER: And you never lost. [LB295]

SARA SCHWARTZTRAUBER: I've never lost a case. [LB295]

SENATOR FISCHER: So your charges were deemed reasonable? [LB295]

SARA SCHWARTZTRAUBER: Let me tell you I've never been taken to court for the cost of the tow. I've been taken to court for the tow itself, whether we legally towed the vehicle. [LB295]

SENATOR FISCHER: Oh, okay. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SARA SCHWARTZTRAUBER: We have never been taken to court for the cost of the vehicle. Please understand, I'm not concerned about justifying my charges. I can justify my charges. I don't charge anywhere near what Omaha is allowed to. Now I guarantee you if this goes to the Public Service Commission, I'm raising my prices, because if this is okay in Omaha, I think the Public Service Commission is going to say, well the city did their homework; they think this is a reasonable charge, then it's reasonable for me and I'm going to raise my prices. My last comment would be, if you want to regulate the towing industry, give it all to the Public Service Commission. Let them give us authority to work; let them do just with us what they do with the taxi cabs, the limousines, give it all to them. Don't just give them a portion of it, because as much as I regret saying this, I agree with the Senator. I agree there probably are some towing companies that take advantage. It would be very arrogant of me to say there isn't. [LB295]

SENATOR FISCHER: Do you like the idea that was presented maybe that all towers should register with the Public Service Commission and to have like a proof of insurance and your contact information? [LB295]

SARA SCHWARTZTRAUBER: I certainly don't have an issue with that. [LB295]

SENATOR FISCHER: So you wouldn't mind being regulated by the Public Service Commission? [LB295]

SARA SCHWARTZTRAUBER: Now are we...we're kind of on a slippery slope here. [LB295]

SENATOR FISCHER: I would interpret that that you would then be regulated by the Public Service Commission once you have to register with them. [LB295]

SARA SCHWARTZTRAUBER: Well, I don't think that's what was being put forth. I think it was being put forth as a regulation just for contact information. I don't want anybody to regulate my business. I think I do that just fine myself. But if it's going to happen, let's don't do it half way. Let's do it all the way, because I believe we do it right. We work very hard. My husband hasn't been able to be here in the last three years because he works 18 hours a day for this company. He's outside right now in 20-below weather. So if anybody wants to go ride with the guys, I'd love to have them do it. My last comment is that on the free storage, the law gives us the right to charge a reasonable storage amount. This bill takes that right away from us and I'm not an attorney by any means, but I don't think it's constitutional. I don't think they can give us a right, in the same bill take it away from us. [LB295]

SENATOR FISCHER: Okay. Thank you. Senator Hadley. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR HADLEY: Thank you, Senator Fischer. Just a quick question. What kind of signage is required...is there signage required in a private...? [LB295]

SARA SCHWARTZTRAUBER: Yes, sir. [LB295]

SENATOR HADLEY: And what has to be on that signage? [LB295]

SARA SCHWARTZTRAUBER: Nebraska state law requires three things. You have to say who can park on the property. You have to say what hours it's enforced, and you have to say who to contact if your vehicle has been towed. [LB295]

SENATOR HADLEY: But you don't have to put what the...I sometimes I thought I had seen maximum... [LB295]

SARA SCHWARTZTRAUBER: Some states have that; Nebraska doesn't. [LB295]

SENATOR HADLEY: Nebraska doesn't. [LB295]

SARA SCHWARTZTRAUBER: I certainly wouldn't oppose that. If it would make people feel better to give them one more notice that if you chose to do this, you're going to pay for it. I certainly would not oppose that. [LB295]

SENATOR HADLEY: Okay. Thank you, Senator Fischer. [LB295]

SENATOR FISCHER: Senator Janssen. [LB295]

SENATOR JANSSEN: Thank you, Senator Fischer. One question your testimony kind of made me think a little bit, you said I don't want to be regulated by anybody. Myself, I'm regulated as a private business owner by my customers. I assume you're regulated by the same people, your customers. [LB295]

SARA SCHWARTZTRAUBER: Correct. [LB295]

SENATOR JANSSEN: Granted, sometimes your customers aren't so happy about the service to begin with. [LB295]

SARA SCHWARTZTRAUBER: Correct. [LB295]

SENATOR JANSSEN: And we're not in too dissimilar type of industries, well they are totally different in their scope, but a lot of those people aren't happy that they are utilizing our services, but you said something that was very interesting and I think it should be interesting to everybody on this committee. You said you would most likely...you would raise your rates because you're looking at what Omaha charges.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

[LB295]

SARA SCHWARTZTRAUBER: Absolutely. [LB295]

SENATOR JANSSEN: And you're in Lincoln, and so do you see a case where maybe...now Fremont considers itself a comparable city because a tow is a tow, 20-below in Fremont today, too, I can attest to that. [LB295]

SARA SCHWARTZTRAUBER: Absolutely. [LB295]

SENATOR JANSSEN: A tow is a tow. So we're using comparable cities now, so whereas before the price of a tow in Hay Springs was \$45, now they know they have this Public Service Commission that can hand them a piece of paper that says, it's okay. So now Hay Springs goes ahead and raises theirs a little bit higher. [LB295]

SARA SCHWARTZTRAUBER: It's going to happen. [LB295]

SENATOR JANSSEN: And the next time you come back, you're like, well whoa, in Hay Springs they're raising it this much so it's a comparable city now because a tow is a tow. So we're using comparable cities now, and we all become comparable right? [LB295]

SARA SCHWARTZTRAUBER: I honestly even believe I have the right to charge a little bit more. I run a 24-hour business. [LB295]

SENATOR JANSSEN: So if I'm 24-hours in North Bend, Nebraska, it's still 20-below there today. [LB295]

SARA SCHWARTZTRAUBER: I agree. [LB295]

SENATOR JANSSEN: I can charge \$150. Omaha does, Public Service Commission said it's okay. [LB295]

SARA SCHWARTZTRAUBER: I am telling you, it's going to happen. [LB295]

SENATOR JANSSEN: Thank you. [LB295]

SENATOR FISCHER: Senator Price. [LB295]

SENATOR PRICE: Thank you, Senator Fischer. Ma'am, thank you for your testimony. Quick question, you have the Capital Towing, you do the towing around here? [LB295]

SARA SCHWARTZTRAUBER: Correct. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR PRICE: So you have one contact that's...you have an agreed upon bidded price and then you have the other work your company does. How much of a difference as a percentage between the bidded price that you do? [LB295]

SARA SCHWARTZTRAUBER: One hundred percent. [LB295]

SENATOR PRICE: So a 100 percent difference between the two. [LB295]

SARA SCHWARTZTRAUBER: Um-hum. [LB295]

SENATOR PRICE: Okay. Great. That's it. Thank you. [LB295]

SENATOR FISCHER: Other questions? I see none. Thank you for coming in today. [LB295]

SARA SCHWARTZTRAUBER: Thank you. [LB295]

SENATOR FISCHER: Are there other opponents to the bill? Please step forward. Any other opponents? If you wish to oppose the bill, please be willing to come up quickly. Good afternoon. [LB295]

JAMES SCHWARTZTRAUBER: Good afternoon. James Schwartztrauber, that's J-a-m-e-s S-c-h-w-a-r-t-z-t-r-a-u-b-e-r. Senators, I will be brief. And this is just for a quick bit of clarification. Especially in regards to the last question that was just asked and the comparison between the city tows, as well as private property tows. I'd like to let it be known that in regard to city-towed vehicles, the city does conduct a significant amount of the work that takes place which is why there is a major discrepancy in the price. The city takes care of fining the vehicles; preparing all the necessary paperwork; processing the vehicle for last known owners; sending out certified letters; and handles all of the other legal aspects; as well as the recourse for any vehicle towed. They also dispose of all the abandoned vehicles that they have taken into their facility which would be Capital Towing. As opposed to a private property tow where we as a company are responsible for all of that. It really makes a significant amount of time that the city has involved in each vehicle that they do have towed off city streets which is time must be taken up by us in private property tows. I wanted to make sure there was a clarification. As well as the fact that the city contract was negotiated almost a decade ago and does not reflect the current price any more which will be negotiated soon again. I just wanted to make that clarification. [LB295]

SENATOR FISCHER: Thank you very much. Are there questions? I see none. Thank you very much. Are there other opponents to the bill? Any other opponents? Please come forward. Good afternoon. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

KIM HOBSCHEIDT: (Exhibit 2) Good afternoon. My name is Kim Hobscheidt, that's K-i-m, last name is H-o-b-s-c-h-e-i-d-t. I represent...I work with Auto 1 Towing in Omaha where our fees are regulated by the city of Omaha. They tell us what we can and cannot charge for doing the private property tows. Like the gentleman just said, the storage of the vehicle, as far as I have to pay for my lot, I have to pay for my security, I have to pay for my manpower whether it's 2:00 in the morning or 2:00 in the afternoon. The fees on a private property tow, there are so many back-end fee costs that are associated with performing that type of tow that a lot of the people that come to my lot to pick up their vehicles don't take into consideration. Nobody is ever happy to get their vehicle towed. They always come; they always complain; they always threaten that they're going to sue me and take all of these things from me, however when they look at it, they're in the wrong because they parked where they should not have. They did not see the signs, did not pay attention to the signs so on and so forth. With that into consideration, the fees are set as far as the city of Omaha. And that's something that I think needs to be in consideration as far as this bill because nobody is going to be happy. Coming to the Public Service Commission, like they also said, the manpower. If I have to come to Lincoln every time somebody complains, and it was mentioned that there should be a fee to have to file this complaint with the Public Service Commission. We do a lot of the private property tows in Omaha. If one out of every four cars that we tow they...get handed their piece of paper that they can then complain about their fees and possibly get them refunded to them free of charge, they're going to do that which means I'm going to have to come to Lincoln quite often and take time out away from my business of running the business to be able to handle that which would then increase my costs as well. So I have that. The burden of proof should be on the vehicle owner. Every private property tow that we do, my drivers are required to take photographs of the vehicle where it was parked and any damage on that vehicle. That is our burden of proof. So that when they come and they say, you ripped my bumper off, I can pull the picture with the time stamp that says, no, your bumper was off already, we had nothing to do with that. As well as, I didn't park...I was parked where I was supposed to be. Pull out my picture, no, that's my burden of proof, you were not, here's the sign, here is where you were parked. So now...and that's where I think all of this is putting the burden back on the tow company. We're performing a service. The letter that I had just passed out to you all is from one of my customers who contracts with me to tow vehicles out of his lot. He is a business owner, he has one of those pay by the day parking lots. People don't want to pay his \$5 fee, so they park there and take up his spots. He calls us, we remove the vehicles. It has him concerned, this law, because now what's going to happen for him, the property owner, he's going to have a burden of proof then. He's going to have to possibly testify for something like that as well. Also, if I...if the costs go up on this, I'm going to end up backing out of doing these tows because it's going to cost me too much money; which then leaves him holding the bag on these cars that are not parked properly. That's all I had. [LB295]

SENATOR FISCHER: Thank you very much for coming in. Are there questions?

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

Senator Hadley. [LB295]

SENATOR HADLEY: Senator Fischer, thank you. Omaha sets the fees. Is this a maximum fee they set or is this what you charge everybody or how does that work? [LB295]

KIM HOBSCHIEDT: It's regulated the maximum we can charge is the \$150 tow, the \$25 admin. So that is what it is stated as being the maximum. Yes, we have standard rates. We charge everybody the exact same fee. [LB295]

SENATOR HADLEY: I guess I'm trying to think of how it would work if we have a city having an ordinance that deals with it and then the Public Service Commission coming in. [LB295]

KIM HOBSCHIEDT: Right. [LB295]

SENATOR HADLEY: Another question, have you been taken to court on the charges, not whether they... [LB295]

KIM HOBSCHIEDT: No, we've never been taken to court on the charges. [LB295]

SENATOR HADLEY: Okay, thank you. [LB295]

SENATOR FISCHER: Other questions? Did I understand you correctly; you would rather see a set fee in statute like Omaha has in their ordinance, you'd rather see that set fee in statute than have the Public Service Commission determine what a reasonable fee is? [LB295]

KIM HOBSCHIEDT: The Public Service Commission in my opinion is going to come in and say, you towed this vehicle ten blocks versus this vehicle that you towed ten miles, we need to adjust that. My costs are the same, the only thing that fluctuates would be the amount of gas that I use. I still have my manpower, I still have my insurance, I still have my signs. I have to pay for the signs, the equipment, the whole nine yards. In my opinion, the ordinance that Omaha has, it works for us. I've never worked with an industry...the towing industry in another city so that's all I know. But I do know that if I have a property that is, you know...which I do, that's on the way west side of Omaha, and I'm charging them the same as the property that's around the corner, but that evens everything out. And I have one set fee for everybody. I don't play favorites because this person came in, you know, and has requested specific guidelines. I have one set fee; everybody is charged the same. [LB295]

SENATOR FISCHER: Okay. Other questions? Senator Janssen. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR JANSSEN: Yeah, Senator Fischer, thank you. And I needed some clarification. I don't want to sound condescending at all. A statute is a state law, that's the entire state. [LB295]

KIM HOBSCHIEDT: Correct. Um-hum. [LB295]

SENATOR JANSSEN: And you're used to just working in Omaha. [LB295]

KIM HOBSCHIEDT: The city of Omaha ordinance. [LB295]

SENATOR JANSSEN: Which says you can charge up to \$150. [LB295]

KIM HOBSCHIEDT: Correct. [LB295]

SENATOR JANSSEN: I know in Fremont we don't charge \$150. [LB295]

KIM HOBSCHIEDT: Correct. [LB295]

SENATOR JANSSEN: And I know...I'm guessing they don't out in Senator Louden's district charge \$150 for a tow. If we had that in statute that you could charge up to \$150, don't you think people would charge close to or near or even at that rate because then they have this little state law in their hand that says I can charge \$150 and there's nothing you can do about it? [LB295]

KIM HOBSCHIEDT: I would assume so, yes. [LB295]

SENATOR JANSSEN: So I just...so do you think a state statute...I mean, what you're talking about is it works for Omaha for you and your business. [LB295]

KIM HOBSCHIEDT: Correct. [LB295]

SENATOR JANSSEN: May not apply so well in Fremont or Hayes Center or Hay Springs. [LB295]

KIM HOBSCHIEDT: Well and that's where I think every city, you know, you kind of look at your own city, your own population and all of that. It works for us, but that's all I know. I've never had anybody tow in Fremont, I've never done any of that. So I know that seems to work for us. [LB295]

SENATOR JANSSEN: Okay. I was just trying to get at...so, for you, the city ordinance works great. You're fine with that. [LB295]

KIM HOBSCHIEDT: I'm okay with that, yes. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR JANSSEN: Okay. But if it was applied across the state, you probably wouldn't be... [LB295]

KIM HOBSCHIEDT: It, it honestly... [LB295]

SENATOR JANSSEN: ...you wouldn't care because you're in Omaha. You wouldn't care. [LB295]

KIM HOBSCHIEDT: Right. Right, because I don't perform private property tows in Fremont. [LB295]

SENATOR JANSSEN: But if there was somebody here from North Bend, they would probably be like, well, oh great, well, maybe it would be okay, because now they can charge more. [LB295]

KIM HOBSCHIEDT: No, and that's where, you know, I know just the city of Omaha and how it works for us. As far as other cities, I would think then they would need to take that into consideration and figure out what works for them. Omaha, that's how they have set their rates and we have that ordinance. So that's what we go by. [LB295]

SENATOR JANSSEN: Right. So perhaps towing companies should be on-board with this because you could all raise your rates if it was set. Thank you. [LB295]

SENATOR FISCHER: You don't always have to answer a question. [LB295]

KIM HOBSCHIEDT: Yeah, I know. (Laughter) [LB295]

SENATOR FISCHER: Any other questions? I see none. Thank you so much for coming in. [LB295]

KIM HOBSCHIEDT: Thank you. [LB295]

SENATOR FISCHER: Are there other opponents to the bill? Any other opponents? Good afternoon. [LB295]

JUSTIN HOBSCHIEDT: Very briefly. My name is Justin Hobscheidt, H-o-b-s-c-h-e-i-d-t. I'm with RJ's Towing which is also located in Omaha. Mostly the reason I'm against this has already been brought up, most of the points so I won't waste your time with that. First of all, I'm going to go on record, I'm against anything that regulates my personal business. I'm in the towing industry as a career. It is something that I chose. I run my business in a manner to where I can retire from it; my kids can be involved in it. And if I'm a crook, if I'm charging unreasonable prices, I'm not going to be in business any

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

more. I think I can take care of my fees, and I know what's reasonable in my business more than anybody else can, especially if they're not in my industry. Also, I have a little bit of a problem with...again, how do you define reasonable fees when you're not in the industry. I believe it says in there that they're going to look at what other tows might charge. Well, I can tell you that if I tow a car ten blocks from the Qwest Center to my lot, if it's a person that's broke down and they want the car towed to my lot, okay, that is one fee. If I'm going to do a private property tow, a property owner has called me and says this car is not supposed to be here, come get it out of here and tow it to my lot. In the one where its a consensual tow, I can guarantee you in my years of doing this I have never been spit on, I've never been threatened with violence, I've never had stuff thrown at me, I've never been kicked. When they come to my office to pick up their car, my dispatcher, my office help has never been threatened, you know. Private property tow is a completely different animal than a consensual tow. There is...I can absolutely justify why a private property tow, the exact same tow, the exact same scenario, the exact same distance should be quite a bit higher than the consensual tow. None of my drivers are going to go do a private property tow for the same amount of money that they're going to go do a consensual tow. They're going to get...I mean...it's very...it's almost like reposing a car. You're towing a car that the person doesn't want towed. The people, quite honestly, are crazy. They're not going to do it. Secondly, someone brought up, those cars, they're full of junk, I've got to hold these cars for 90 days by state law. They're full of junk, they stink, they smell, who knows what's in them. After the 90 days I have to dispose of these things. Once again, that is a completely different animal. I also want to say that even though I'm in Omaha and my fees are regulated, I don't agree with the regulation. I think I ought to be able to charge whatever I want to charge. The city impound lot charges more than what they say we can charge for storage per day. They charge \$20 a day; they say we can only charge \$15 a day. Okay? I charge the \$15 a day. Every single one of our tow away customers that comes...I won't say every single one, but they're unhappy with us. They did not want their car towed, even though, you have to remember, we're towing these cars by request of the property owner off of lots that were posted, okay, just like someone else said. They come in here, they're still unhappy that their car was towed, even though we're charging a regulated fee, they're still unhappy with the fees. They come in all the time, I say, well, I charge what the city charges. Oh, okay then. Then they go to the next point, well my bumper is damaged. Well, fortunately I took pictures of it before I even hook...here's your car sitting directly in front of the sign that says no parking without a tow truck hooked to it and your bumper is off of it, now it is sitting here in my lot. So obviously your bumper was there. Okay, so now they're going to go to the next thing. If I have to hand them a piece of paper that says, okay, if you're unhappy with your fees, you can file a complaint and go to the Public Service Commission. I guarantee you that we're going to have a ton of people. Well sure. Okay, why would I not do this, go to the Public Service Commission? And once again, it's going to come down to the whole thing. Am I going to have to come to Lincoln every time. I might have...if I have 200 cars impounded at any one time in our lot that I control, let's say a quarter of them do this. Okay? How many times am I going to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

have to...how much time am I going to take out of my business to have to come and justify my own fees when it's regulated by the city of Omaha on top of it? I just...I don't see how that's going to work at all. And the last thing that I have a huge problem with is the...is not being able to charge storage until they're notified. I mean these guys know...they might not know their car is towed for a day or two, but they knew they parked in a private lot that was posted. Their car is gone, I'm responsible for it and I need to be able to charge storage for it. Thank you. [LB295]

SENATOR FISCHER: Okay. Thank you. Are there questions? Senator Price. [LB295]

SENATOR PRICE: Senator Fischer, thank you. And I'm really interested, sir, in something that came across, are there different types of equipment in towing, correct? [LB295]

JUSTIN HOBSCHIEDT: Absolutely. [LB295]

SENATOR PRICE: So I could have conceivably five companies, five different abilities...I went off the road last year and a guy...I was so happy, my towing guy called in a widget, he could pull my whole car up over the side of the lip off to the side versus getting in the front and watching it go down and roll off into the ditch. So the important is when you...when I looked at this is, your pricing could be different, if I have a brand new slaphappy thing and somebody else doesn't, you know, that could be a reason for differentially pricing based on the technology. [LB295]

JUSTIN HOBSCHIEDT: Absolutely. Let's take for example the exact same automobile, let's say it's a Dodge Stratus in the exact same time of day in the exact same parking lot. Let's say the car is pulled in forward as opposed to backed in. I have to use different equipment for that tow. If the car is backed in, I can put a autoloader underneath of it, I can lift the car up and go. If the car is pulled front in, I have to use dollies, because my drive axle is to the curb. Same exact car, same exact parking lot, same exact time of day, depending on how it is parked, I have to use two different pieces of equipment. [LB295]

SENATOR PRICE: So it would be...you could conceive then you could end up with a pretty big laundry list of different things the commission would have to consider in finding reasonableness. [LB295]

JUSTIN HOBSCHIEDT: Absolutely. [LB295]

SENATOR PRICE: Great. Thank you very much. [LB295]

JUSTIN HOBSCHIEDT: You bet. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB295]

JUSTIN HOBSCHIEDT: Thanks. [LB295]

SENATOR FISCHER: Are there other opponents to the bill? Any other opponents? Any one wishing to testify in a neutral capacity? Good afternoon, Commissioner. [LB295]

ANNE BOYLE: Good afternoon. I thought I would be out of here in about 15 minutes. [LB295]

SENATOR FISCHER: Welcome to predatory towing in the Transportation and Telecommunications Committee. [LB295]

ANNE BOYLE: (Exhibit 3) Thank you. My name is Anne Boyle, that's A-n-n-e B-o-y-l-e. Good afternoon, Madam Chairperson and members of the Transportation and Telecommunications Committee. I am Commissioner Anne Boyle representing the 2nd District on the Public Service Commission. I am here to testify in a neutral capacity on LB295. For informational purposes, currently the commission certifies and sets rates for taxi services, limousine services, and intrastate household good movers. Additionally, the commission investigates and adjudicates consumer complaints regarding certified carriers. Presently, the commission does not regulate towing services. Adding the narrow responsibility of handling consumer complaints related to towing services could be incorporated into the commission's existing transportation department duties without the addition of staff. And at that point I would like to mention that Mark Breiner who is the director of the transportation committee...department of the commission is with me today. Also, is Commissioner Tim Schram. I don't know if Commissioner Rod Johnson may have been here. And Mike Hybl who is executive director of the commission. Now the processes set forth in LB295 are similar to the processes already in place at the commission. The commission and its transportation department staff are experienced in evaluating charges for a variety of transportation and other services and would be well equipped to make the decisions required by LB295. However, should the scope of LB295 be extended or expanded to include any additional certification or registration of towing service providers, the additional responsibility would likely require additional staff to handle the significant increase in workload. Such an expansion would necessarily require additional staff time in processing applications and enforcing any complaints. At this time, and I know there may be many questions I would like to answer them, but first if I may tell you this, we handle many, many, many complaints from consumers. Most of them...many of them are from telecommunication carriers, but there is a parallel and that is this; before we take any complaints, and take and burden commission time, we always require the complainant to contact the carrier or the people that they are complaining against first to see if they cannot come to some kind of an agreement that makes sense. And therefore, without...I think we would be (inaudible) doing the same thing with these. We

would not say...just, summarily take any complaint that is called in or walks in the door. Secondly, it's been testified to that people are very concerned that they would have to travel to Lincoln in order to (inaudible) out a complaint. The commission often has hearings that are out-of-state...out of Lincoln, but they are teleconferenced. And so we will go to the library and anybody that is a complainant can be there; both sides can be there. One commissioner is usually there; a commission staff may be there. But we interact with them. I can be in Lincoln, they can be in North Platte. And so that is not something that should be a matter of concern to any of the people if and when we ever have a complaint. And frankly, I think this legislation would be something that is going to curtail the behavior of bad actors. Regrettably it is the bad actors who require legislation in order to curtail what they do and those people who are operating good businesses like the people who have testified today are the ones who get concerned that they may be called in for something that they probably don't do. But I can tell you there are cases that I'm aware of. There are carriers who may follow a meter reader in Omaha. That's where I am from. The old...I live in the Old Market and there have been occasions when a towing service will follow that meter reader and within minutes be putting that car up on a hoist and towing that car away even with the owner standing there. There is a case I'm aware of where a young woman parked her car legally in a lot. I'm sure you're aware that there are many lots in Omaha and there are various sizes, some of them are very, very large. So it is not really...the property owner may not have called. They go in and they watch and they look for violations for example, a car with expired plates and they'll pick those cars up and they will take them out and then often that happens on a weekend and they not only pay for storage, but they were taking that car off private property and towed and incur the ensuing costs. So there are people who do those things. And like I said, regrettably, the bad actors are the ones who bring this kind of legislation to the Nebraska Legislature and before you. I would be happy to answer any of the questions that you have. But I don't see that we will have a significant increase in hearings because of the process that we have which is try to settle this first with them. And often, I will tell you this, we don't always find on behalf of a consumer. They may call us because they're confused; they may not understand what was being told to them and we then translate and tell them this is what is allowed and therefore you really don't have a complaint. So we first go through an internal process and before we do anything, with any type of legislation that you may send to us, we will have a hearing, a public hearing and we will ask the interested parties, in this case the towing services, and perhaps even people who have complaints to come to a meeting at the commission and this one does require us to be there, although we could be off-site, it just doesn't make sense to have five different hearings and it's more costly and ask them to come in and we will explain to them what the law says; we will explain to them everything that we do and how we do it and we...so they will feel, at least that there is a process that is not going to be onerous...only on them, and that...then we are looking at different things as the law states that we may look at what other towing companies are paying. Senator Janssen, you brought this up several times, that in Hay Springs it may be one thing, in Omaha it might be another thing. There are things to consider. One could be the size of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

the company. If they have a fleet of ten tow trucks that's one thing, and less then if you have a fleet of one. Then it is not a fleet if you have one. So there are other things that do consider. But I don't believe that we want to get into the...at least at this point unless we were directed to, we are getting into rate setting. The city of Omaha has an ordinance that say you may charge up to. We would look at things like that as well if the cities have ordinances. But there are comparisons that can be made and right now competition is in place and the comparison is less in Hays Spring if they are charging \$45 and in Lincoln they're charging \$100 and Omaha something else. Size of the company does have a reflection on what should be a fair and decent price. But again, I don't think that we would be in rate setting. That's a whole different arena and it is very complicated. So if I can answer any other questions that can be of help to you. [LB295]

SENATOR FISCHER: Thank you, Commissioner. Are there questions? Senator Hadley. [LB295]

SENATOR HADLEY: Senator Fischer, thank you. Commissioner Boyle, just a quick question, you say additionally the commission investigates and adjudicates consumer complaints regarding certified carriers. Can the person that is making the complaint, can they go to court and sue the certified carriers? Is that an option rather than going to your...to the Public Service Commission? [LB295]

ANNE BOYLE: They can always do that. But this is, frankly, more consumer friendly and that the cost to the consumer and to the person that's being charged...the party that's being charged is much less expensive than going to court. Does not require having an attorney there. They can come in and speak for themselves. And often times we do have those types of hearings, but generally those hearings that are contested whether there are attorneys and a lot of time spent are from a, for example, a phone company is going after another phone company, business to business. We rarely, frankly, have a formal complaint filed at the commission on behalf of consumers. We generally are able to solve most of those problems through the informal process after they have tried and not been able to take care of things on their own with whoever the problem is with. [LB295]

SENATOR HADLEY: Okay, thank you. [LB295]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Janssen. [LB295]

SENATOR JANSSEN: Thank you, Senator Fischer. Commissioner Boyle, always nice to see you. You talked about rate setting and you kind of mentioned taking into consideration a fleet or one and that's a little bit disturbing to me because you still have one tow truck one tow; one person, maybe two and you start taking into consideration, you know, that's almost like taking into consideration somebody got a better deal on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

their ink toner back at the office and they got a better scale and a better economy or cheaper truck. I mean it...to me it seems like you're getting...the PSC would be getting into an area, in my opinion, that they have no business to be in and almost sure de facto rate setting as I talked about earlier, and actually one of the tow truck...one of the people in that crowd kind of...when I said, actually, you can raise your rates got a smile on their face and said, you got it. And that's somebody that's towing. So I think we're sending out a message to everybody, go ahead and raise your rates because now we're going to have some legislation where a committee behind us that says, it's okay to charge \$150 because that's what Omaha says and, oh, by the way, I know there's no A bill on this, but however this should the scope for LB295 be expanded to include any additional certification staff will be required, so to the consumer we're saying it's going to cost you more for a tow, and I'm basing this not on my opinion, I'm basing this on the people that are the professionals in the towing industry that just told me that. And I'm basing this on your knowledge of the PSC which is expansive. But it will cost more for the PSC to carry out this duty if as anticipated that it will be a bunch of these things come forward, or a bunch of complaints come forward. So I don't know if you can find a question anywhere in that, but I'm sure you have an answer because I've been around you for a long time and watched you for a long time. [LB295]

SENATOR FISCHER: Would you like to comment? Would you like to comment back, Commissioner? [LB295]

ANNE BOYLE: Well, only that...I don't think our concern is about...is about a...complaints. Our concern is if we have additional work, for example, I think some of the testimony today was that they would like to have all private lots registered and charge a fee. And then we would have to have...we would have to account for that with the state auditor. And so...our concern is more about what...if you tell us to do beyond what this says, for example, doing that and finding other private lots, and that to me creates another problem because I live, like I mentioned downtown in the Old Market, we have a place where four cars park and there's a sign that says no parking, if you get towed it's your expense and here is who you call. That's a private lot. You would have a difficult time finding all the private lots. During the College World Series, it's not going to happen where it has in the past, people use their front yards as a private lot. So trying to enforce that I think and trying to tell us we're responsible for that and the ensuing problem that could occur that somebody would say, well, I was at the College World Series and they had my car towed and I want you to go after so-and-so who owns a private home and put it in his private front yard. I think with that is a problem. [LB295]

SENATOR JANSSEN: Sure. I mean, it basically could get really, really sticky. And when you said...I'm familiar with where you live, as a matter of fact. You don't have to worry about that, but. (Laughter) [LB295]

ANNE BOYLE: But if I could...but to your other point regarding for example, you just

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

talked about Hay Springs, we would not compare Hay Springs to Omaha. We would look for similar towns and what they might be charging to see what would be fair and reasonable. And I would be concerned if today without having any history in this and trying to see how it works and enforced if we would all of a sudden jump to doing that. I would say, you know, if there comes a time after we did this for a while and you would be the ones who will be...you are the people who oversee what we do and tell us this is not good or this is what we think you should do something or we would bring a problem to you. So at this point, to think that we're going to start setting rates across the state, there are ways to determine what is fair and reasonable for a territory. And we do that all the time. But I don't know. I don't see us saying that so if somebody has one tow truck compared to another community that has one tow truck that's a comparable cost. And if that has been abused by somebody, that's when we would have a hearing. Frankly, I don't know that we would have very many hearings at all when we go through the entire process that we use today. And like I said, we rarely have them by the general consumer. And frankly, I cannot remember that we have had ten in my 14 years at the commission. [LB295]

SENATOR JANSSEN: So you would look at comparable towns pretty much. [LB295]

ANNE BOYLE: Right. [LB295]

SENATOR JANSSEN: Okay. And interesting, you brought the College World Series and one of the storage or tow truck operators mentioned it was \$15 a day, I'd kind of like to get their address, because during the College World Series, \$15 a day sounds pretty reasonable for parking in that particular area. Thank you, Commissioner Boyle. [LB295]

SENATOR FISCHER: Thank you, Senator Janssen. Senator Louden. [LB295]

SENATOR LOUDEN: Well, thank you, Senator Fischer. And thank you for being here today, Commissioner Boyle, and I'll try and gather my litter up a little tighter than what Senator Janssen did, and see if we can get some. As I look through this thing here, it says, you know, the commissioner or someone can file a complaint with the commission and that sort of thing and it goes on to say that...and then the commission will...the other person has a right to file, then it goes on to say, the commission may hold a hearing on the complaint. Now that's "may" hold a hearing. Well considering some of these issues have to be probably done in the county, do you vision seeing holding a hearing or will this be done through the mail with the correspondence between the two people and the commission and then it goes on to say that if you find it's reasonable, why, you probably won't do anything. Whereabouts will that fit in there with what you would have to do with your workload? Will you actually hold hearings around it or will most of this be done through the Pony Express? [LB295]

ANNE BOYLE: Won't be done by the Pony Express, but as I mentioned earlier, we hold

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

conferences and hearings using television...telecommunications systems. The state of Nebraska has a system wherein they can pull up the commission's office and then in Omaha, for example, the State Office Building has a video conference in there and so they hook those up to one another and people are notified that the hearing will be held in Omaha at this time on this date. But we don't do any of that unless we already have notified the public...made a public notice of that. So it is not something that happens every...very quickly. And it has to accommodate the commission's agenda in Lincoln. So sometimes we may not have a hearing on it on a complaint for several months until after that complaint has been filed because of the process it takes. And also coordinating the commission's schedules. [LB295]

SENATOR LOUDEN: Okay. I was wondering...I'm hoping we're not building another TERC Committee that something goes on and lasts forever. The other question I have then, if you find the charges are unreasonable or something like that it goes on to say that you may assess a civil penalty against the respondent or both and that sort of thing. Does the Public Service Commission have the authority to assess civil penalties; and if you're doing this by telecommunications, or anything, can you assess civil penalties by using that type of communication when it comes down to statutes and law? [LB295]

ANNE BOYLE: We have fining authority and I can honestly tell you that we are reluctant to use fining authority on many unless they truly violate commission policy. It does happen to telecommunication carriers because they know when they have to file certain information and sometimes they don't do that. But we're not somebody that is looking for ways to fine, it's doesn't...it's not helpful to anybody. We do look for ways to solve the problems. And so often we will say they...here is the penalty, the penalty is that they're not going to have to pay you what you charge or the penalty to the complainant is, you have to pay what they told you to pay. But to...I'll give you a real example that happened in Senator Fischer's district, we had a complaint against a telecommunication carrier in the Valentine area and it was a communication company that was not providing the service they should. In other states, they may have fined them millions of dollars in addition to having to make repairs. I think it is in an industry's best interest and consumers' best interest because they generally wind up paying anything that is assessed against a carrier to say, you go fix that and you are going to report to us on a two-(inaudible) basis and tell us how you're coming. If you don't, we're going to bring you in here again and make it tougher on you and the standards will be tougher. But we avoided doing that in that one particular case simply because it doesn't help...does not help consumers to charge somebody millions of dollars and then say now consumers you get to help pay for that. [LB295]

SENATOR LOUDEN: Now on that, when you mention telecommunications or something, that was because they probably weren't carrying on a rate that were set, or were they doing something that wasn't in statutes any place or already set [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

ANNE BOYLE: They weren't providing service. They were not providing good telecommunication service and many, many...the customers came to a hearing in Valentine and sat there and told us how bad their service was and they were paying the rate that they were supposed to pay for good service. And so it was failure to provide service. [LB295]

SENATOR LOUDEN: Okay. Thank you. [LB295]

SENATOR FISCHER: Thank you, Senator Louden. Senator Dubas. [LB295]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Commissioner Boyle. One quickly learns down here when you're working on legislation there are two very tiny words that yield a great deal of power and those words are "may" and "shall." And in here this talks about the commission may hold a hearing. I think you alluded to that a little bit earlier, but I would like you to expand on it a little bit. So you as the commission would get a complaint brought to you on what seemed to be an unreasonable towing charge. You would be able to do a great deal of investigation on your own through the commission before you ever made a determination about this should go forward to a hearing. Would that be correct? [LB295]

ANNE BOYLE: Exactly. And we do that still all the time. So if a complaint is brought to us then we ask for information from the other party to explain themselves. And then we can make a determination whether we go forward. [LB295]

SENATOR DUBAS: So a lot of this information gathering would be done over the phone...with phone calls, other types of communications with the towing company, communications with the person who feel...felt they were in the wrong, so you would be able to...and then after gathering that information, you could then make the determination. It maybe appears that there is a problem here and we feel like we need to have that hearing or, sorry, you're in the wrong, the fee is not out of line. [LB295]

ANNE BOYLE: And that's what I meant when I said that that's where we like that to get, you know...to try to discuss this first with the towing company. Then if they want to come to us, then we would contact the towing company and ask them for information. The example was made that people say, well, you pulled off my bumper or you did something to my bumper, they said they have pictures. That's, to me, is an easy decision on our...that we can make, and say no, your car was damaged before that ever occurred. [LB295]

SENATOR DUBAS: So that word "may" gives you a great deal of discretion as to what would go forward and what wouldn't. [LB295]

ANNE BOYLE: Absolutely. [LB295]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR DUBAS: Thank you. [LB295]

SENATOR FISCHER: Thank you, Senator Dubas. Other questions? Senator Campbell. [LB295]

SENATOR CAMPBELL: Thank you, Senator Fischer. Commissioner Boyle, has the commission reviewed the request here and put together a fiscal note? I couldn't find anything and does that still need to be done? [LB295]

ANNE BOYLE: My testimony was, if the bill stays as it is, we don't see that there needs to be a fiscal note, that we can handle that, given the way we do things today. If things change, then we would have to relook and see what those are and then decide whether or not there has to be a fiscal note and whether it would require an additional employee. [LB295]

SENATOR CAMPBELL: And the reason for my question is, later on today, I mean we're going to be looking at cuts to the commission from the budget and I just want to make sure for the record that you are comfortable. [LB295]

ANNE BOYLE: Well, I'm comfortable with what I said, but I'm not comfortable with any more cuts. [LB295]

SENATOR CAMPBELL: We're not planning any more. [LB295]

ANNE BOYLE: Thank you so much. [LB295]

SENATOR CAMPBELL: Thank you, Senator Fischer. [LB295]

SENATOR FISCHER: Thank you, Senator Campbell. If you notice on the fiscal note, there is no fiscal impact on the bill as it is currently written. Any other questions? I see none. Thank you, Commissioner, for coming in today. [LB295]

ANNE BOYLE: Thank you for the opportunity to be with you too. [LB295]

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? Anyone else? Senator Lathrop, would you like to have a short closing? (Laughter) [LB295]

SENATOR LATHROP: Really? Did you say short? Well, you know what, I'd...thank you very much for your patience. I know this is the third time you've taken this up. But after listening to Commissioner Boyle I'm more convinced that this is the right approach. More because it is a more gentle, consumer-friendly, touchy-feely sort of let's resolve the issue. We don't need to be banging people around. And I'm more convinced that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

this is the right approach after listening to Commissioner Boyle. And maybe that's because I'm being educated on what the Public Service Commission does. I'm going to make some suggestions, three suggestions or four, and, really, one of the reasons Ms. Hitz came in, I think, is because we have talked. We have sat down and talked about what I'm trying to do and I'm convinced she heads an association and she is concerned that there are good operators and there are bad operators. And the good operators in almost any profession or service industry that you're in are always interested in seeing the bad operators taken out of it or regulated. And I have talked with Ms. Hitz who would, frankly, like to see everybody who tows register with the PSC, put a number on the side of their truck and everybody has insurance or bonded, you know, they know what they're doing. That's maybe a little bit broader than the scope of this bill, and so that's why I haven't proposed an amendment. But I do want to offer a couple of things to the committee. First, as I look at my own bill, I would make these changes. First, in the provision that says no towing charges...this would be page 4, lines 20 and 21, where it says, you can't charge a storage fee prior to notice going out. I don't know how...why that's in there. If you, the committee, have a reason for that, then you can leave it in if you feel like it should be. I don't think...I think they ought to be able to charge. I don't think they should be able to charge storage fees for times when their lot is closed and I can't go get my car. But the portion that says, no storage charges shall accrue prior to such notice, I thought that was in there kind of in the wake of the bill Lavon had in here last year. [LB295]

SENATOR FISCHER: We'll check it. [LB295]

SENATOR LATHROP: Okay. The second suggestion I'll make is if you want to exempt cities that already have regulated in the area, I don't have trouble with that either. I think when I first started this one-man crusade, no one, no one did anything about towing from a private lot. If Omaha has through an ordinance after having a hearing decided that \$150 is the number, then exempt out any community that has already done that and then it takes care of itself. The third thing I would say, is if you want to make the burden of proof, the guy who had his car towed has the burden to come in and prove that the charge is unreasonable, I don't have a problem with that either. And finally, in response to Senator Loudon's concern which is, what if I paid the fee and they have overcharged? Well, that's page 3, paragraph 3, lines 8 through 12. I don't have a problem if we say you will get a refund if you have been overcharged. And then I think that kind of addresses a lot of the concerns. Now I'm going to address one more, and that is, the idea, again, from...and forgive me, I don't remember her name, from Lincoln Towing...Capital Towing, who was here and said, you do this, and I guarantee you that I'm going to raise my rates. And it was like deja vu to me because I sat here when Senator Heidemann offered a bill last year and we heard the same thing. It was the apocalypse in towing and we're going out of business and we're raising our rates and we're going to do all this if you, Senator Fischer, make us give notice to the lienholders, if I'm remember the bill right, and I would say...I know people come in here and we get

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

to debating these things, and you might say things that are a little bit of an exaggeration, but we heard that last time and the sky didn't fall after we passed Senator Heidemann's bill. Okay. [LB295]

SENATOR FISCHER: Okay. Thank you, Senator Lathrop. [LB295]

SENATOR LATHROP: I'll see this on the floor? [LB295]

SENATOR FISCHER: Any questions? [LB295]

SENATOR LATHROP: Thanks. [LB295]

SENATOR FISCHER: I see none. Thank you very much. With that I will close the hearing on LB295. (See Exhibit 1 from Robert Hallstrom) Open the hearing on LB259. Good afternoon, Mr. Vaughan. [LB295]

DUSTY VAUGHAN: Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. For the record my name is Dusty Vaughan spelled V-a-u-g-h-a-n and I am the legal counsel for the committee. LB259 is a bill introduced as a result of the LR542 process that this committee participated in last fall. As a part of that interim resolution, each standing committee was charged with finding cuts in each agency under its jurisdiction that receives General Funds. The Nebraska Railway Council was grouped under the Department of Roads and thus came the jurisdiction of this committee. LB259 would eliminate the Railway Council. The council was formed in 1980 to administer the federal Railroad Local Rail Freight Assistance Fund and the corresponding state Light-Density Rail Line Assistance Act. Under statutory authority the council was responsible for administering programs and funds for light-density rail line acquisition, rehabilitation or improvement, operations, and rail facility construction projects implemented pursuant to the state and federal acts. However, the program is no longer funded at the federal level. The council has recently approved grants that utilized all the funds that were left. The bill would authorize the Department of Roads to take the place of the Railway Council and to continue to administer existing agreements with a railroad. The fiscal note on LB259 estimates a General Fund savings of approximately \$2,400. And I believe there are representatives from the Department of Roads to discuss how they would implement such a change, Senator Fischer. [LB259]

SENATOR FISCHER: Okay. Thank you, Mr. Vaughan. With that could we have Director Fredrickson, would you like to come forward. Are you here as a proponent today? [LB259]

MONTY FREDRICKSON: Yes. [LB259]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR FISCHER: Okay. Good afternoon. [LB259]

MONTY FREDRICKSON: (Exhibit 4) Good afternoon, Senator, members of the commission. My name is Monty Fredrickson, F-r-e-d-r-i-c-k-s-o-n. I am the director, state engineer for the Department of Roads. I am here today to provide testimony in support of LB259 that repeals the sections of statute pertaining to the Nebraska Rail Council. I would like to thank Senator Fischer for introducing this bill on behalf of the Department of Roads. The Rail Council was formed by the Legislature in 1980 to administer federal funds in the Light-Density Rail Line Assistance Act. The council was comprised of nine members appointed by the Governor from the rail and shippers industry and several state agencies. The Department of Roads is designated as staff for the council. I, as the director, serve as an ex-officio member of the council and the director has typically been elected as chairman of the council. Over the years the council has provided loans to short line railroads totaling \$1.2 million and grants totalling about \$5 million. The federal funds were provided by Congress under the Railroad Revitalization and Regulatory Reform Act of 1976. Congress did not provide funding for these programs after the early 1990s so the Rail Council had no continuing funding source. No state funds were allocated other than minor funds each year for council expenses. No loans have been given out to a short line railroad since 1993 because the railroads were unwilling or unable to meet the match requirements for the use of these funds. At the beginning of 2010 there was approximately \$1 million remaining in the council fund. The remaining \$1 million was granted to the Nebraska Central Railroad for emergency bridge and track repairs following the flooding in Norfolk in early 2010 that included the destruction of the Nebraska Central Railroad bridge over the Elkhorn River southwest of Norfolk. The Nebraska Central Railroad provides vital rail service to several industries in Norfolk. Those bills have been paid in full and the fund balance is at zero. Since no funds remain and there is no indication of any additional federal or state funds, we support LB259. Be happy to answer any questions. [LB259]

SENATOR FISCHER: Thank you, Director. Are there any questions? Senator Louden. [LB259]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, yes, and thank you for being here, Director Fredrickson. I guess, yeah, they gave away all their money and at the present time you still have council members, but they don't receive any pay or anything do they? [LB259]

MONTY FREDRICKSON: No, they do not. [LB259]

SENATOR LOUDEN: And if you do away with this council, who in your Department of Roads is going to pick up that slack, because at the present time there is some talk from the federal level of looking on the high-speed rail service and that...and different railroad service out there, do we need some kind of a vehicle to be able to do something about

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

receiving some of those funds if they become available? And do you have the expertise in the Department of Roads to do that? Because we got what, a \$4 million grant for the railroad up there in Chadron and I don't know if the Department of Roads even knew it happened until after it happened. [LB259]

MONTY FREDRICKSON: No, we didn't. And that shows you how important we are. So really we do have a division in the department that is called the Rail and Public Transportation Division and they do monitor the transit agencies of the state and deal with all the railroads across the state on many, many issues. So they are able to keep track of what is happening in high-speed rail across the country and there is no statutory duties left for the Rail Council and we would be happy to serve as the liaison in those areas. [LB259]

SENATOR LOUDEN: Do you think then for what little it costs to keep them around for awhile that it's a good idea to get rid of the expertise that you have from, probably, those nine members or so? Who inspects these short-line railroads and for bridge work and anything else nowadays? [LB259]

MONTY FREDRICKSON: It's not the Rail Council. They have no regulatory duties whatsoever. They only existed to administer these funds. [LB259]

SENATOR LOUDEN: Okay, well one of the members that I knew did inspect bridges, now whether he was asked by the railroad, the short lines to do it, I don't know, but I know he has done work like that and that's the reason I'm wondering if there's anybody at the Department of Roads with expertise to do anything like that. [LB259]

MONTY FREDRICKSON: We have bridge engineers, but that's not our responsibility to inspect railroad bridges. [LB259]

SENATOR LOUDEN: Right. But I...and I'm wondering, you know, what's become...we have some short lines that I'm kind of concerned about that's going to probably either be needing some funding or else we're going to lose them. And if we lose some of those, why there's a lot of commodities that's hauled over those that are going to go out on a rubber tire. Of course that means more wear on some of our roads, so that's the reason I'm always reluctant to do anything that might jeopardize what little short lines we have left in the state of Nebraska. And I'm wondering if this is the way to go to plum get rid of the Railway Council right now. [LB259]

MONTY FREDRICKSON: I can only say I don't know that they can do much help in that area. Maybe the individual members in their private capacities would do that because they are... [LB259]

SENATOR LOUDEN: Okay. Thank you. [LB259]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

MONTY FREDRICKSON: You bet. [LB259]

SENATOR FISCHER: Director, I would just like to clarify, or have you clarify some of the questions Senator Louden just asked. The council does not inspect any bridges or lines, do they? [LB259]

MONTY FREDRICKSON: No, not to my knowledge, That was never a responsibility given to them. [LB259]

SENATOR FISCHER: And the purpose of the council was only to distribute the federal money that came to the state which we haven't seen since the '90s, is that correct? [LB259]

MONTY FREDRICKSON: That's correct. [LB259]

SENATOR FISCHER: How would they distribute that money? Was it...were applications made to the council and then that group alone made the determination where those funds would go? [LB259]

MONTY FREDRICKSON: I believe so. I only have about a year and a half direct experience with the council and we met once in that time and that was what happened. Nebraska Central came and made a presentation that this disaster occurred and they made their case for the funds and the council voted and decided that was a good use of the remaining money. So I believe that's what happened in the past that other short lines would come in with various projects to submit for the use of the funds or for the loan. [LB259]

SENATOR FISCHER: Right, and we've never, I guess since the '90s, we haven't seen any additional funding from the feds. So I want to underline that, correct? [LB259]

MONTY FREDRICKSON: Correct. [LB259]

SENATOR FISCHER: When Senator Louden said he was concerned that there isn't funding for the short lines, that's true, isn't it, because at the state level are we seeing any funding for short lines for rail projects? [LB259]

MONTY FREDRICKSON: Not through the Department of Roads. [LB259]

SENATOR FISCHER: Okay. Thank you. Any other questions? I see none. Thank you very much for coming today. [LB259]

MONTY FREDRICKSON: Thank you. [LB259]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR FISCHER: Are there other proponents for the bill? Any other proponents? Are there opponents to the bill? Any opponents? Anyone wishing to testify in a neutral capacity? I see none. Waive closing and I will close the hearing on LB259 and open the hearing on LB250. Good afternoon, Mr. Vaughan. [LB259]

DUSTY VAUGHAN: Good afternoon again, Senator Fischer and members of the committee. For the record once again, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n and I am the legal counsel for the committee. LB250 is another of the committee's General Fund reduction options under LR542. The agency affected by the bill is the Public Service Commission. The committee was charged with finding approximately \$250,000 in General Fund reductions to the Commission's budget. LB250 would eliminate the regulation of limousine services by the commission. Currently limousines are regulated as a carrier engaged in intrastate commerce for the transportation of passengers. The bill would create a new exemption for limousine services from commission regulation. Last fall, the commission estimated that it could eliminate one inspector in its transportation department, saving approximately \$74,000. And I do know that there are representatives from the commission here to discuss the impact on them, Senator Fischer, so I will turn it back to you. [LB250]

SENATOR FISCHER: Okay, thank you, Mr. Vaughan. With that I would ask the first proponent to come and testify. I think...are you here in neutral this time? Okay. Any proponents to the bill? Any opponents to the bill? Please come forward then. Commissioner, we're on opponents right now. [LB250]

TIM SCHRAM: Thank you. [LB250]

SENATOR FISCHER: Oh, okay. You know, you and I are going to have to talk. (Laughter) [LB250]

TIM SCHRAM: Yeah. [LB250]

SENATOR FISCHER: Good afternoon. [LB250]

TIM SCHRAM: (Exhibit 5) I appreciate your patience. Good afternoon, Madam Chairperson and members of the Transportation and Telecommunications Committee. I am Commissioner Tim Schram, spelled T-i-m S-c-h-r-a-m, chairman of the Public Service Commission representing the 3rd District. I am here today to testify in opposition of LB250. Currently the commission certifies taxi services, limousine services, and intrastate household goods movers and through that process ensures competitive, safe, and adequate service for Nebraska consumers. The commission is charged by the Legislature with ensuring that carriers transporting passengers are fit to do so including making sure that the vehicles are properly insured. The commission

requires those transporting passengers to provide proof of appropriate and sufficient insurance. Additionally, the commission regulates rates for these services. However, one of the most significant roles of the commission in the regulation of limousine and other transportation services is to investigate and adjudicate consumer complaints regarding all certificated carriers. LB250 is a result of the LR542 budget process, would exempt limousine services from commission regulation. Limousines are typically hired to provide transportation for weddings, proms and other school activities, anniversaries, reunions, and other special events. Passengers are frequently minors. We recognize that the limousine industry may be considered a luxury service distinct from standard taxi services. However, those services should still be provided in a safe and reliable manner. Without regulation, passengers provided with inadequate or unsafe services have no redress except court action which can be expensive and protracted. Without regulation, anyone, regardless of criminal background, financial ability, adequate insurance coverage or safe vehicles could provide for service to the public. There will be no effective way to keep individuals with criminal backgrounds, including theft, assault and sex offenses from entering the business. No agency would have the authority to address any problems that may arise. Unchecked entry into the industry by unregulated providers could result in lower standards of service. This change in the marketplace may require short cuts by providers in order to remain competitive. Such a situation could lead to a race to the bottom and passengers would have no place to lodge complaints. The issue of insurance will also be important. Deregulation could result in a new unregulated carriers not acquiring adequate or even effective insurance. The commission currently requires that carriers have \$1.5 million of insurance in place for vehicles up to 15 passengers and \$5 million for vehicles rated at 16 or more. This compares with the state minimum liability insurance of \$25,000. This is clearly inadequate amount of insurance for the risk that is involved with limousine transportation. A total denial of coverage is also a possibility if the insurance company has not been properly informed by the unregulated carrier regarding the nature of the business being conducted. This leaves the general public in potentially disastrous position of being injured with no recourse. The commission regulates the rates and ensures that providers are fit and financially capable of providing limousine service. We do not conduct formal inspections of the vehicles used to provide limousine service. However, inspectors often informally inspect the condition of the vehicles when on site. Deregulation would also result in no entity being able to address and redress problems that may arise. Most carriers operate in many counties or even statewide, making it unlikely that any city or county would have the ability that the commission currently has to address problems incurred by the general public. The commission understands that the state's budget requires difficult decisions, however, the savings associated with the elimination of the regulation of limousine services do not justify the possible negative impact on Nebraska citizens. The commission encourages the committee to carefully consider the ramifications of exempting limousine services from regulation. And I would be happy to answer any questions you may have. [LB250]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR HADLEY: Are there questions? Senator Dubas. [LB250]

SENATOR DUBAS: Thank you, Senator Hadley. Thank you, Commissioner Schram. So if I understand this correctly, you would still be doing this type of inspection for like taxis, those types of (inaudible)? [LB250]

TIM SCHRAM: Correct. [LB250]

SENATOR DUBAS: So we're just looking at exempting...what's the difference between a taxi service and a limousine service as far as what they do? [LB250]

TIM SCHRAM: The types of vehicles and the rates a lot of times. Also, what we refer to as a type of transportation. Taxi cabs pretty much anyone and everyone who calls open class would provide transportation or some limousine operators that also have expanded authority, but a lot of times it's based on territory. Obviously, limousine rates are considerably higher than taxi rates. [LB250]

SENATOR DUBAS: So currently the way it is set up, every limousine driver or operation in the state has to comply with...? [LB250]

TIM SCHRAM: Correct, they make an application with the commission. There's a hearing held. If there are protestants to say that either there is not a need or they're not fit, we take a look at that; make a determination whether there is a need in the area that they are requesting authority in and make a decision based on that. [LB250]

SENATOR DUBAS: So I'm assuming that this cost-savings would be you wouldn't need...you wouldn't need an additional inspector, is that where that cost-savings is coming from? [LB250]

TIM SCHRAM: Correct, on the fiscal note. That would one position. [LB250]

SENATOR DUBAS: So you're still doing all these inspections with your taxis and other things? [LB250]

TIM SCHRAM: Correct. [LB250]

SENATOR DUBAS: So are there that many limousine services in the state of Nebraska that one person is...that's pretty much their responsibility? [LB250]

TIM SCHRAM: Well those inspectors work for the Transportation Department and they also do inspections on taxi cabs, any open class carriers, railroad crew vans, do inspections on that; what we know is the buses for special activities. [LB250]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR DUBAS: Okay, thank you very much. [LB250]

SENATOR HADLEY: Senator Louden. [LB250]

SENATOR LOUDEN: Yes, thank you, Senator Hadley. Commissioner Schram, I guess I have a question here and I was wondering if you don't inspect these limousines it is supposed to save \$74,000. Now, we had a bill here all afternoon, if we dump all this towing service in on top of you, it wasn't going to cost a thing. How does that work? [LB250]

TIM SCHRAM: Well, there are fees collected, and on the fiscal note of \$74,000 for the one position, I do want to point out there is revenue collected in the amount of \$12,050 that goes back to the General Fund. But there are fees that are collected and I don't know when the last time those fees have been changed as far as application. And I know the plate fee is \$50. [LB250]

SENATOR LOUDEN: That's for the limousine. But then how can you...then if we dump this towing all on top of you, it surely is going to cost you something to do that extra work to settle all these towing problems that we discussed here all afternoon. [LB250]

TIM SCHRAM: The testimony I heard on that, it depends on how far you go, whether you go full regulation or just an avenue for the consumer to answer a complaint. I don't want to get into that bill too much. But it depends how extensive...how far down the road you go on that bill, Senator. [LB250]

SENATOR LOUDEN: But it could...that other bill could cost us more than the \$74,000 we're trying to save here. [LB250]

TIM SCHRAM: Yes, it could. [LB250]

SENATOR LOUDEN: Okay, thank you. [LB250]

SENATOR HADLEY: Further questions? Senator Campbell. [LB250]

SENATOR CAMPBELL: Commissioner Schram, this summer when we discussed this, did the commission oppose this cut? I can't...I'm only...this isn't a trick question, it's just I'm trying to remember. [LB250]

TIM SCHRAM: Well, at that time we...I think it was reviewed in the fiscal impact and our regulatory authority with other open class providers such as taxi cabs and we determined last week that we would take...oppose this. And if I may elaborate, as an individual commissioner, not speaking for the rest of the commissioners, the difficulty I see here is that you're going to still have regulation of taxi cabs over here, but anyone

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

and everyone can get in the business, as I said in my testimony that well we're not a taxi service, we're a limousine service and at that point the commission has no authority to address any consumer problems that may be out there in public transportation. [LB250]

SENATOR CAMPBELL: That was a very helpful clarification. Thank you. [LB250]

SENATOR HADLEY: Any other questions? I guess I have a question or maybe a comment, after reading your testimony I just substituted towing service for any place in here you talked about limousine services and it literally fits. You're regulating the limousine service; requiring them to be insured, inspecting their vehicles and such as that, could you make the same question, you know, the commission requires those transporting vehicles to provide proof of appropriate and sufficient insurance. I'm just saying, I found it unique that we spent an hour and a half talking about whether or not towing services should be regulated and a lot the things you talk about in here are things we might want a towing service to adhere to. That's just a comment. [LB250]

TIM SCHRAM: Okay. [LB250]

SENATOR HADLEY: Thank you, Commissioner Schram. Are there further opponents? [LB250]

TIM SCHRAM: Thank you. [LB250]

JAMES LAUDENKLOS: Good afternoon and thank you, Senator Hadley, and Transportation Committee, my name is James Laudenklos, that's L-a-u-d-e-n-k-l-o-s. I'm the CEO and president of Prince of the Road transportation based out of Kearney, Nebraska. I'm here in opposition of LB250 on the deregulation of the limousine services for several aspects which I'll be brief on my bullet points. The biggest issue I have as a past limousine owner, the regulations and requirements that I met to be a certified carrier, a limousine service, not only required me to maintain an accurate fleet, a safe fleet, but met transportation industry standards, but with insurance standards to protect those of liability. As an open class carrier, I have a concern that I work passionately with the Public Service Commission that this total cut, which is less than 7 percent of the total transportation plates issued under the limousine services to the Public Service Commission, would be the \$74,000 would constitute a 22 percent cut in the Public Service Commission's transportation budget. Why am I concerned as an open class carrier? We work hand-in-hand as an open class carrier with the Public Service Commission on making sure that we are in compliance with our regulation: background checks, criminal checks, insurance compliance, safe vehicles. They work hand-in-hand with their inspectors. That 7 percent reduction would leave 93 percent of the rest of the inspections within a statewide facility to one PSC investigator. It's an overwhelming task as it sits right now. I don't think it's a doable task with just one. I pay \$4,500 a year for my PSC plates. If you deregulate this under the term limousine itself, why can't I as an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

open carrier then say I'm now a limousine service and no longer pay that \$4,500 and not have to comply with the regulatory standards and constantly compete as an open class carrier under a different classification. Why am I concerned about that? I believe that the state is working very, very hard on a very typical situation here on trying to balance a budget and give the best impact to the people we serve. This alleviation of burden of transportation is all our responsibility and as an open class carrier that's what I try to provide. But as an open class carrier, I believe that myself and my peers could probably provide a better hands-on approach with the state and maybe assist them in developing an overall approach to a solution to this unique problem. That's what I offer on this table is to come in as a large open class carrier and help the committee come to a resolution that benefits those we serve, the burden of transportation. I'm concerned that this may lead to an unfair competition under the commission rules as defined and what it may open up for those that are trying to provide the best service possible and are no longer able to do that because of the cost restraints that have now been lifted. Those are my brief bullets. I'm sure my colleagues and peers would like to add more to this. But I'd like to open it up for questions at this time and thank you for my time.
[LB250]

SENATOR FISCHER: Thank you very much. Senator Hadley. [LB250]

SENATOR HADLEY: Senator Fischer, thank you. Appreciate you coming in. You said an open class carrier, could you define... [LB250]

JAMES LAUDENKLOS: I'm allowed...I apply for public service authority as an open class carrier within the state of Nebraska to provide transportation in a specific geographic area to provide services for certain individuals, HHS is one of them, and any public person that would desire transportation. I have filed rates on file that I can't exceed. And that's why I have to charge everybody an equal and fair rate no matter where you're located and the way my rates are filed. So it makes it fair for everyone that uses my service. [LB250]

SENATOR HADLEY: And that is different from being a limousine? [LB250]

JAMES LAUDENKLOS: It's...in a limousine service, HHS was not a designation that was authorized. My fear as a limousine I was able to charge a rate for my limousine rate and it was filed with the Public Service Commission in my geographic area that I had to maintain. So as a limousine provider I had a certain amount that I could charge under my public service rate and stay within my geographic area and I met their compliances under inspection, insurance and therefore I was a safe provider carrier. My concern is, if I deregulate this as an open class carrier, what stops open class carriers then to say, I'm now a limousine, I'm not going to pay my \$4,500. I'm not going to have to be complied; I don't have to be regulated, therefore I can reduce my rates...see where I'm going with this. I don't think it's proper, but yet I believe that as a transportation provider,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

more forethought can be put in this. No plan is perfect. [LB250]

SENATOR FISCHER: Thank you, Senator Hadley. Are there other questions? Senator Louden. [LB250]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. If I understand you right, then, sir, you or I or anybody else could go get a...if this bill passes, could go get a stretch Hummer and start hauling people and we wouldn't need the Public Service Commission. [LB250]

JAMES LAUDENKLOS: It wouldn't have to be a stretch Hummer. The definition of a limousine is anything that's going to be in a luxury status. I could get a 15-passenger van and put red velvet in it, call it my luxury van and start running. [LB250]

SENATOR LOUDEN: I see, and Public Service Commission wouldn't have any regulatory? [LB250]

JAMES LAUDENKLOS: If this passes as written. [LB250]

SENATOR LOUDEN: Nor would anybody else. [LB250]

JAMES LAUDENKLOS: Correct. [LB250]

SENATOR LOUDEN: Okay, thank you. [LB250]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB250]

JAMES LAUDENKLOS: Thank you for your time. [LB250]

SENATOR FISCHER: Next opponent please. Good afternoon. [LB250]

JAMES JONESON: (Exhibit 6) Hi. Senator Fischer and members of the Transportation Committee, I'd like to thank you for giving me a few minutes to come up here and speak. My name is James Joneson, it's J-o-n-e-s-o-n. And I am the owner and president of Leisure Limousine and Sedan, Incorporated, which is here in Lincoln, Nebraska. I am here to speak against; I am adamantly opposed to LB250 to exempt limousines from regulations through the Public Service Commission. I'd like just to take a few minutes to get to reflect my opinion on this and then answer any questions that you might have. Through its rules and regulations the Public Service Commission regulates a number of functions in regard to the operations of limousine services in the state of Nebraska. These regulations begin at the very beginning of starting your limousine business or acquiring one through purchase or merger. And at the very beginning the commission investigates the applicant's fitness, moral fitness; his financial ability to maintain and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

operate and safely acquire and keep limousines operating for the safety of the public, as well as his...the need, whether there is a geographical...any specific geographical reason, if there a need for additional limousines. The current rules imposed by the commission, as an owner of a limousine company, I believe they are very well balanced. They protect the state; they protect the limousine company, as well as the citizens of the state that ride in those limousines. And I want to vary from my prepared thing and I want to clarify one thing about...limousine services by definition is a luxury service granted to those people who can afford to pay for it. But that's not entirely the case. We have sedan services that are luxury sedans that are contracted out to insurance carriers; they're contracted out to medical providers; they're contracted out to schools. We pick up people of all nature. We transport them under contract. And then we also provide for corporate transportation to and from airports, to meetings from home, to the office, and then we go into the luxury side of the service. When people talk about limousine services, they constantly think weddings. Weddings are actually in reality only 41 percent of the business that we do. And they're only on a Saturday. And the rest of the six days we do other things. Okay? But at any rate, once the process is completed and the application is granted, and I used to work for the Public Service Commission years ago and I am absolutely unaware of anybody who has applied who was not granted the opportunity to have a limo business unless they had some serious criminal background or financial instability that preceded them from doing that. Any normal person got that authority. Once that process is completed, the Public Service Commission regulates just about everything we do. Sometimes as an owner of the business I think the commission can be a tad bit overbearing in some cases, but on the other side of the coin I know that what they make me do is for my best interests, as well as for the safety of the passengers that we haul. The commission regulates my rates. They don't set them, I set the rate. I file it with the state. They have the hearing to approve my rates and then force me to live by that rate. But I always have the opportunity to come in and change those rates if they need to go up or down depending on what's going on. The commission regulates my insurance requirements. I'm required to have \$1.5 million on my sedans and \$5 million on the other cars that hold 16 passengers or more. My insurance premiums right now run me \$18,540 a year. That premium is sometimes hard to make, but it's well worth it if you have a little problem. I also keep comprehensive insurance on all my vehicles. I have a quarter million dollars worth of investment sitting in a building that gets run with paid passengers. I need to protect that and that's how I do it. And I do that because I spent 30 years as a police officer and I know that 20 percent or better of the people that are driving on the streets of our town right here are driving underinsured or not insured at all. So I keep that comprehensive on everything. And it goes beyond that. [LB250]

SENATOR FISCHER: If you could just wrap up, sir. [LB250]

JAMES JONSON: Okay. The Public Service Commission also kind of puts requirements on the insurance carrier. When I had purchased my insurance, the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

insurance carrier through the state is required to file a Form E. That Form E tells the state that I have insurance and I can legally operate. They also tell the state when I lapse my insurance or terminate my insurance. And when that happens, the Public Service Commission comes and shuts me down and I'm out of business until I have a new Form E filed with the state. If you deregulate this, anyone can have a car that they call a limousine or they can go buy one off eBay for \$5,000, bring it to town and run it with the state minimum requirement, \$25,000 worth of insurance liability. And when you put 14 people in the back of that limousine, \$25,000 liability is not enough. Absolutely not enough. And one of the problems I have is that being in Lincoln here, we're the first one in the phone book for Lincoln when you go look for limousines. We get three to four letters a year from inmates who are in the process of being released from incarceration that either want to be drivers or they want to own a limousine business because they know where there's a cheap limousine they can buy. I forward all those letters to the Public Service Commission, but if you deregulate the limousine business, those people are going to have limousine businesses and be driving limousines. Although it's not regulated, but by their advice, all our drivers go through an extremely extensive background investigation and the reason we do that is because they haul corporate clients, they haul private members of society, and they get involved in the very private part of their business and lives. And we just don't allow anybody to do that. [LB250]

SENATOR FISCHER: Okay. Thank you very much. Appreciate it. Are there any questions? Senator Louden. [LB250]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. As I read your presentation here, and when you said you purchased authority now. That was someone who had a license to run a limousine service and you had purchased that? [LB250]

JAMES JONESON: Yeah, I was going to get to that. There are two ways to get an authority in the state. One is you apply for authority and you go through the process of showing need for a certain geographical area, as well as showing your financial fitness, as well as being able to show your moral character as far as being able to do this type of thing. Or you can go buy an existing authority and then you only have to go through part of that problem with just a transfer of ownership of that authority through the Public Service Commission. As a general rule, that's generally the quickest, but not always the cheapest way to go. In 2005 I purchased my authority from a company who stopped doing business but still had an active authority. When I purchased that authority, a third party came in and filed a temporary restraining order to stop the sale of the business because they felt, right or wrong, that they had a first right of refusal on that business. The reason I put that in my statement is because the Honorable Judge Mullen, the District Judge of Douglas County, when he took the testimony for the TRO, temporary restraining order, he came in and ruled that that authority issued by the state of Nebraska through the Public Service Commission was real property and it had to be dealt with by the courts as real property. So my question in my statement was, under

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

the Constitution of the state of Nebraska and the Take Over Clause, you deregulate the insurance industry, I mean the limousine industry, my authority becomes a worthless piece of paper. You've taken my property and its value away from me. So under the Take Over Clause, am I offered compensation as someone who lost their house or field? [LB250]

SENATOR LOUDEN: Now is it the only way then you can start a limousine service is you have to get permission from the Public Service Commission at this time to...? [LB250]

JAMES JONESON: You have to apply and go through those different steps in the process just like anybody else. [LB250]

SENATOR LOUDEN: And that's the only way you can start your limousine service? [LB250]

JAMES JONESON: Either that or buy an existing authority. [LB250]

SENATOR LOUDEN: Or buy one, either way you got to have that authority in order to do it. [LB250]

JAMES JONESON: That is correct. [LB250]

SENATOR LOUDEN: Okay, thank you. [LB250]

JAMES JONESON: Um-hum. [LB250]

SENATOR FISCHER: Other questions? I see none. Thank you very much for coming in today. Next opponent please. [LB250]

RANDY MEEK: Good afternoon, Senators. [LB250]

SENATOR FISCHER: Good afternoon. [LB250]

RANDY MEEK: (Exhibit 7) My name is Randy Meek, M-e-e-k. I'll be brief. I'm the chairman of the Nebraska State Legislative Board of the Brotherhood of Locomotive Engineers and Trainmen and represent approximately 1,100 members who operate trains in the state of Nebraska and work on the Burlington Northern Santa Fe and Union Pacific. We're here today to state our opposition to eliminating the commission's authority to regulate limousine services. State safety regulations for hire transportation services have been a long-sought goal of ours due to circumstances unique to our rail labor. Current state regulations provide us some level of protection when we're transported less than 15 passenger vans. We are concerned that the totally unregulated

limousine industry would put railroad employees at risk from inadequate insurance and total lack of safety and driver qualification standards should the railroads choose to use this form of transportation in an attempt to supplement their current transportation providers. The railroads are huge consumers of transportation services and they run short sometimes, especially during adverse weather conditions and they have to supplement sometimes. And we just feel this is going to turn the limousine industry into a wild, wild west show. And it's also possible that a hotel could hire one of these unregulated drivers to haul us from our place where we go off duty to the hotels we stay at. So we just don't think it's a good idea. And also we're really concerned about the loss of an inspector. There are...I don't know how many there are, but I know there are more than a hundred, probably less than 300 of these buses in the state of Nebraska that haul us, these 15-passenger or less vans that are regulated by the PSC now. And as far as I know, they're the only body that is inspecting these vans. So, we're going to really have a great loss if we lose one of these inspectors. One final point is that if you're going to do this, please, I don't know if you can amend this bill to do it, or whether we do a separate bill, but we would really like to see a statute to prevent these limousine carriers from transporting employees in the course of their employment. Just for the reason that they're not regulated. That's all I have. [LB250]

SENATOR FISCHER: Thank you, Mr. Meek. It's nice to see you. I'd like to explain what the LR542 process is. When the committee counsel introduced these three bills that we're currently on, he made reference to that and I don't know if the people here today know what that process was. Last spring the Legislature passed a resolution, LR542, and it charged the various committees to look at the agencies under their jurisdiction and look for 10 percent cuts in those agencies. That's where this bill came from; the previous bill came from and the next bill came from, because this committee was charged with finding 10 percent cuts from the Public Service Commission. I don't disagree with you that by eliminating inspectors we are looking at situations that this state might not want to get into. But when we're looking at close to a billion dollar shortfall, our charge was to find 10 percent cuts of those agencies, so that's why we...that's why I introduced this bill because the committee, we looked at the different programs with the Public Service Commission, we worked with the Public Service Commission in trying to find programs that I guess would have the least amount of hurt on the public and we all know the duties of the Public Service Commission are to help protect the public. So believe me, I don't take this situation lightly nor do my committee members. But I'm happy you're here today to oppose the bill because we need to take our jobs seriously and realize what the decisions that we make, how they are going to affect people's lives. So I appreciate you all coming in today and you, Mr. Meek. Senator Hadley, you have a question. [LB250]

SENATOR HADLEY: Yes. Thank you, Senator Fischer. Mr. Meek, are you basically talking about where, you know, I drive between here and Kearney and I see Union Pacific trains stopped and vans picking up crews, is that basically what you're

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

concerned about? [LB250]

RANDY MEEK: Yeah, those are the vans that transport us. They are regulated by the Public Service Commission and those inspectors are charged with regulating those vans as far as their safety standards. [LB250]

SENATOR HADLEY: And so the concern would be if we pass this legislation that it is possible that these could become unregulated. [LB250]

RANDY MEEK: Not these. [LB250]

SENATOR HADLEY: Not these. [LB250]

RANDY MEEK: Not the vans that are currently out there now. But in the situations where...like when there is heavy snowfall or something or there is a major derailment of some kind and all of a sudden the trains get backed up, well those crews have to be handled. So they have to be transported. Well, they maintain...of course the bus companies maintain a number of buses to handle normal traffic flow, they don't maintain a lot of extra buses for unusual circumstances. So they do have to on occasion go out and try to buy other transportation services. Well now if they've got this unregulated, cheap service out there, I wouldn't put it past them to look at doing that. Because we don't work under workmen's comp provisions, we work under what's called the Federal Employer Liability Act. If we're in a vehicle that gets into an accident and it's not the driver's fault, it's the other driver's fault that hits you, we have no coverage other than what they may have on that van or that car or that limo whatever you want to call it. We're at the mercy of them at that point because the railroad is not liable because they had no part...they had no liability in the matter because they weren't...the liability was on the guy that ran the stop sign and hit us. So we're kind of unique that way. So we would ask at least if you're going to do this, at least put a provision in there to prevent these people from hauling employees in the course of their employment. They have no business doing that. But they may try to do it. [LB250]

SENATOR HADLEY: Thank you. [LB250]

SENATOR FISCHER: Other questions? I see none. Thank you very much for coming in. Next opponent please. Good afternoon. [LB250]

KRISTA RIFE: (Exhibit 8) Good afternoon, Senator Fischer, and members of the Transportation Committee. My name is Krista Rife, R-i-f-e and I'm the director of operations for Royal Limousine in Omaha. Obviously I'm here to oppose LB250. I feel that passing the bill would not be in the best interest of our business. This would open the door to allow anyone to purchase a vehicle and run it without regulations that we have in place. Customers will have no way of detecting legitimate businesses from just

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

somebody down the street who decides to start a limousine company. This could also start a price war, I believe, between companies from other undercutting prices that are already established. I already have people, customers calling and saying, well, this person down the road says that we can have a 2-hour wedding package for this price and then want me to match that price as well. And of course we can't because we're regulated with the Public Service Commission. Royal Limousine employs 12 chauffeurs, most of which do have CDLs in place and, of course, with holding a CDL you have to have accident...be accident free. All of our drivers have invested lots of time and money in keeping their CDLs up to date and you know they take pride in their jobs and their training, ongoing training. I think we owe it to our consumers to provide qualified drivers. And I'm here, you know, in place to make sure that that does happen. But if this bill is passed, who is going to make sure that that does happen? There will no longer be guidelines in place for the amount of insurance; obviously, we have established that here today. Drivers will no longer need to be screened by a reputable company which is what we do, we screen our drivers, background checks if needed. Some of our drivers are CPR-trained if they're working with children. And I think eventually that will jam up the court systems because people are going to file lawsuits and, you know, if there is an accident or, you know, without screening...screening the drivers, I think that will allow criminals and sexual predators to transport children and elderly. A lot of elderly people do call us and they're wanting help with baggage into their homes. I know which drivers, you know, will...which driver to select for that particular job, you know, that I would feel comfortable going into an elderly woman's house and taking her baggage up to her bedroom. I think businesses will start complaining. We're located in a downtown area so we do a lot of service down there. Parking is very, very limited. I think businesses will start complaining that drivers are soliciting transportation. We've already kind of witnessed that where somebody just with a sedan will sit outside of a restaurant or a bar and solicit the customers as they come out of the establishments and try to provide transportation to them, you know, cash and you don't really even know who this person is. And then the airport as well. I think sedans could probably just pull up to airports and transport people who are needing transportation. So in part I feel that deregulating public transportation service will set up false security to our consumers that they're in safe hands. [LB250]

SENATOR FISCHER: Thank you very much. Are there questions? Senator Hadley. [LB250]

SENATOR HADLEY: One quick question, Senator Fischer. You say that most of which have CDLs; to be a limousine, you know, a 15-passenger limousine, can my normal operating license suffice to drive that? [LB250]

KRISTA RIFE: Correct. [LB250]

SENATOR HADLEY: Okay. [LB250]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR FISCHER: Other questions? I see none. Thank you very much for coming in today. Next opponent please. Could I have a show of hands of how many opponents we have left. One, two, okay, thank you. Four, you got to get those hands up high for me. Five now. Okay, put your hands down. No. Good afternoon and welcome. [LB250]

DWAINE TREASE: (Exhibit 9) My name is Dwaine Trease, D-w-a-i-n-e T-r-e-a-s-e. Myself and my wife, Deb, we own and operate Special Moments Limousines out of Clearwater and Grand Island, Nebraska. And we've been operating this limousine business for about 18 years. Commissioner Schram and some of the other carriers have pretty much covered the, you know, the insurance and things that the Public Service Commission actually does for us. But I feel that these rules and regulations that the Public Service Commission are regulating has helped our business grow to what it is today by keeping unfit people out of the business. We talk about, you know, that anybody could get into this type of business, you know, looking at a criminal background. Just to give you a couple of scenarios on what could take place. I guess there's a thing in hairdressers, what goes on in hair shops stays in a hair shop; well, what goes on in a limousine, stays in the limousine. But passengers talk about things in a limousine that they want...you know they don't want spread around. But say for instance that someone went out and bought a limousine and they had a criminal record, you know, for theft and the people in the back of a limousine were talking about being gone on vacation for a period of time. Well, this person knows when these people are going to be gone; he knows where they live because he picked them up and he dropped them off there. So that gives them the opportunity to do something they shouldn't do. And I guess we're...worse scenario yet would be that a couple was going away for a weekend and they were going to leave their 16-year-old daughter at home and that person that's driving that limousine happened to be convicted rapist. You wouldn't want to imagine what could happen. Or say it's prom time and your kids are all ready to go to prom; limo pulls up, chauffeur looks great, but they don't know that this guy has just gotten out of alcohol and rehab last week. He drops the kids off at the dance, he's got three hours to kill. Then he pulls off in the parking lot somewhere and one of his old drinking buddies sees him sitting there, you know, and pulls up with a 24-pack of Bud Light and say, you got three hours, we can have a few drinks, and, you know, you can still get these kids home. Well, by midnight he is, you know, he's drunk, still picks the kids up and he is involved in a head-on collision with these kids in the car. So it's just...it's a big safety factor for the people of Nebraska. And in the paperwork that I've given you, on the last page of that, there is an article that was done by myself and participated in by the Public Service Commission that talks about pretty much what we've been talking about today. I really think if the commission was going to take any action on anything, that they would maybe look at more public awareness to, you know, that the general public is aware that there are rules and regulations in this industry. [LB250]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR FISCHER: Thank you very much. [LB250]

DWAINE TREASE: Thank you. [LB250]

SENATOR FISCHER: I appreciate you not reading word for word your statement. We can...believe me, we can read those later. Thank you. [LB250]

DWAINE TREASE: You can read that later. [LB250]

SENATOR FISCHER: Any questions from the committee? I see none. Thank you for coming in today. [LB250]

DWAINE TREASE: Thank you. [LB250]

SENATOR FISCHER: Next opponent please. Good afternoon. [LB250]

STEVE MASON: (Exhibit 10) Good afternoon again. Hopefully I'm better prepared this time. Senator Fischer and committee members, my name is Steve Mason, I'm an independent agent here in Lincoln, Nebraska. And part of the classes of business I deal with include limousines and other public transportation. Limousines are defined in many ways by our impressions, the dictionary, DOT, and finally by the PSC. The PSC simply states that a limousine means a vehicle used to provide limousine service in a closed sedan. Anything from a 4-door family car to something as big as a Greyhound bus. And by the way, I severely condensed the paperwork that I've handed out to you. I'm just going on the Reader's Digest version. Without regulation, anyone can declare themselves to be a limousine service. For example, someone recently released from prison, we've heard this before, for being a predator, sex offender, a pedophile, he could buy an old Crown Vic from the police auction if he wanted to and insure it for statutory minimum limits, if at all and start carrying children, elderly, single women, mentally challenged, charge them whatever he feels he wants...or she would want to charge. If a passenger is injured or killed by an unregulated driver with a history of deviant behavior that would have prevented him from having an authority for driving a limousine previously, is it possible the state could be held accountable? I mean after all, it is the state who is intentionally removing the safeguards from the public. LR542 committee felt that the public is at a lesser risk with a luxury service such as a limousine, but is it possible that the same regulations are what make them so safe? You will lose driver and business background checks, financial stability verification, minimum driver standards, vehicle safety requirements, adequate insurance limits, that's where I come in, and a whole lot more. LR542 committee recommended the elimination of the burden to regulate limousine services which would result in this \$74,000 in General Fund assistance. We all recognize why that has to be. I'm just not comfortable that this is where it should be coming from, in my opinion. From November 1, 2009, through October 31, 2010, the PSC issued a total of 1,886 plates to regulated carriers. Only

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

129, or 6.84 percent, were limousines. The state employs only two field investigators to cover the entire state and just some of their duties are listed in the full letter that you will have. But less than 10 percent of their time is involved in limousine regulation. When discussing fees, (Section) 75-305 states that fees shall be fixed by the commission and shall not exceed the amount actually necessary to sustain the administration and enforcement of such sections. Is that the same thing as saying you're supposed to charge enough fees to cover your expenses or cover the bills? In 1963, the application for an authority cost \$50 and a plate was \$15. In 1982 the application for an authority increased to \$75 and the plates to \$25. In 2003, the plate fee maximum was set at \$80 for most vehicles; in 2005 the application fee increased to \$300, the plate to \$50. Fifteen dollars in 1963 is the same as \$107.26 today. How much income will the PSC lose when the 393 taxis or the 639 vans that are currently regulated realize they can change their operation by calling themselves a limo and void all the regulations, fees, etcetera? Deregulating the limousines will destabilize the entire public transportation industry; put the general public at much greater risk and probably not save nearly the \$74,000. I strongly urge the bill be killed. If you have any questions, I'd be pleased to answer. Much better than last time. [LB250]

SENATOR FISCHER: Thank you. Thank you, Mr. Mason, you did a nice job. I would tell you that on every bill, the Legislative Fiscal Office works with the agencies and committees; all senators have access to a fiscal note and I can assure you that probably in almost every case those fiscal notes are accurate. So I know you're challenging the figures, but I would tell you I believe you can be comfortable with them. Are there any questions? I see none, thank you very much. [LB250]

STEVE MASON: Thank you. [LB250]

SENATOR FISCHER: Next opponent please. Good afternoon and welcome. [LB250]

BILL ALFORD: Hi. Thank you. I'm Bill Alford; I'm owner of VIP Limousine in Omaha, Lincoln, serving Fremont and the surrounding communities, the largest limousine operation in the state. [LB250]

SENATOR FISCHER: Could you spell your name please. [LB250]

BILL ALFORD: A-l-f-o-r-d. [LB250]

SENATOR FISHER: Thank you. [LB250]

BILL ALFORD: This bill has a lot of concerns to us. We applaud the goal of cutting costs and balancing budgets, but as you've heard previously, this bill will have far ranging ramifications on the transportation industry and it's not hypothetical. I've been in the business since 2002; started the business from scratch and this industry was noted for

being a very unsavory business with prostitution and gambling, alcohol and all sorts of... and drugs, of course. And the Public Service Commission has done a reasonable job in cleaning this up and it's no longer a wild west show, but it's a...they have actually...I've been to hearings where people have applied that have a stack of traffic violations, driving with out licenses; people that have criminal backgrounds and the Public Service Commission has not authorized that license simply for fitness. And that is to protect the public and that service will be gone. Limousines are not just the stretch Hummers or stretch limousine buses and we have those. Limousine service considers black car service, the typical corporate transportation and services that a lot of people take to go to the airports and it's scheduled service as opposed to taxi on demand. And if you go to any major city in the United States, we're affiliated with the National Limousine Association. If you go to Beijing, China, if you go to London, everywhere people can count on public transportation. They see the medallion on a taxi, they see the plates for limousine service, for black car service, there is an area of trust there. And to remove that in this particular category would put the public, in my opinion, at grave harm and open up for a lot of concerns. And so even though I'm not in favor of regulation, this is an industry that has benefitted from the regulation and I would strongly urge, if there are opportunities to raise the plate fees and balance that 7 percent that way, that would certainly be much preferred over cutting an enforcer. The enforcer's job so little time is actually spent on limousine service and regulating limousine service and to cut an entire position you would be cutting a lot of other services, and there is not that much that they do, but they do screen people from getting in and they do take care of complaints as we call them in for people that are trying to operate illegally. So either that or perhaps a wage freeze or a wage reduction, but deregulating limousine service would not be, in my opinion, a wise move. Thank you. [LB250]

SENATOR FISCHER: Thank you very much. Are there any questions? I see none. Thank you very much. [LB250]

BILL ALFORD: Thank you. [LB250]

SENATOR FISCHER: Next opponent please. Good afternoon and welcome. [LB250]

KYLE McCLARY: My name is Kyle McClary, K-y-l-e M-c-C-l-a-r-y. I represent Aquila Limousine out of Grand Island. I don't want to repeat anything everybody else has said. I guess my two biggest things the Public Service Commission does is you have to adjust your rates with them and your authority. And then two nice things about that is it creates a healthy competition between businesses. You know between Special Moments and us, you know, where there is...it keeps the competition healthy and respectful and everything like that. Whereas if they didn't have that, then anybody who is going to have a limousine could charge any rate and all the companies that are trying to do a prestigious job can be run out...underground. I guess the biggest thing in the event that they do, I guess, deregulate everything, there needs to be something, an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

association or anything like that, some kind of governing body over the limousines. That way, there's something there to protect the public people of Nebraska. Any questions? [LB250]

SENATOR FISCHER: Thank you. Nice short testimony. Any questions? I do have one. You're paying fees now, is that correct? [LB250]

KYLE McCLARY: Yes, ma'am. [LB250]

SENATOR FISCHER: Would you be willing to increase paying fees in order to keep this regulated? [LB250]

KYLE McCLARY: Yes, we would. [LB250]

SENATOR FISCHER: Thank you. Anybody else? Seeing none. Thank you very much. [LB250]

KYLE McCLARY: Thank you. [LB250]

SENATOR FISCHER: Next opponent please. [LB250]

JOHN DAVIS: Good afternoon, Madam Chairwoman, members of the committee. [LB250]

SENATOR FISCHER: Good afternoon. [LB250]

JOHN DAVIS: I both appreciate you giving me the opportunity and also have to say that I really wouldn't want your positions. [LB250]

SENATOR FISCHER: But we need your name anyway. [LB250]

JOHN DAVIS: Oh, I'm sorry. That would be John Davis. [LB250]

SENATOR FISCHER: Thank you. [LB250]

JOHN DAVIS: J-o-h-n D-a-v-i-s. I'm director of operations for Happy Cab Companies in Omaha. [LB250]

SENATOR FISCHER: Nice to see you again. [LB250]

JOHN DAVIS: (Exhibit 11) Thank you. Again as I started to say, I really would not want your jobs. I understand your charge from LR542 and what your responsibility is. That being said, I am here in opposition to LB250 because of a number of concerns. Based

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

on that, you've heard pretty much everything I would have said from my peers. I'll try and save you time on that. You've heard that, obviously, the \$74,000 would represent about 7 percent of what the commission's revenue comes from or what have you, so you've heard that. You've heard that, obviously, there are a lot of concerns with the significant changes in enforcement and what that would mean. I think this comes down to an issue of safety. We spent a lot of time this afternoon listening to testimony related to adding some type of regulation to the transport of automobiles, empty automobiles. What we're talking about is making sure that there's regulation for the transportation of a very precious commodity which is people. And a lot of times our most vulnerable citizens, because quite frankly without this regulation and people going under the guise of a limousine without any kind of regulation you have people that are transporting people that are out partying or attending wedding celebrations and that sort of thing. And so, obviously, at least from my perspective is that I want someone who has some type of responsibility that I'm aware of, you know, they have the appropriate insurance, it's the right kind of person. And that's something that we take very seriously; we work with the PSC to make sure that we not only meet their expectations in terms of checks of our drivers and that sort of thing, but we actually go above and beyond what we're expecting. And that's just a personal choice that we have. So that, obviously, would be a concern to me. Obviously, the market would be flooded with jitneys or there are a lot of loose terms to describe basically an unregulated carrier. But again, obviously, as a carrier in the state of Nebraska I would be concerned about that. I would be concerned about it basically being unfair to competition because, again, we've taken the steps to make sure that we have the appropriate insurances to protect the public, that we inspect our vehicles each month and we do a number of things that I won't bore you with the details. But again, I'm going to fall back to public safety, and that's something that again is very important to us, it's how we choose to lead our business. And I can tell you, being a father that lost a 16-year-old son in a car accident two years ago, that is something that I am not really not willing to look past and something that I can't put a monetary value on in terms of safety. So that is really the end of my testimony. I certainly would welcome any questions if any of the senators have any. [LB250]

SENATOR FISCHER: Thank you, Mr. Davis. I'm sorry for your loss. [LB250]

JOHN DAVIS: Thank you. [LB250]

SENATOR FISCHER: Any questions? I see none. Thank you for coming in today. [LB250]

JOHN DAVIS: Thank you. [LB250]

SENATOR FISCHER: Next opponent please. I believe we're on the last opponent, is that correct? Anybody else going to testify? Okay. Good afternoon and welcome. [LB250]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

VANCE YOUNG: (Exhibit 12) Good afternoon, Senator Fischer, and committee. My name is Vance, V-a-n-c-e, Young, Y-o-u-n-g. I'm co-owner of Servant Cab Company here in town, do business as Yellow Cab and Capital Cab. I'm here in opposition of LB250 for many reasons. Commissioner Schram, he pretty well nailed them all, made my paper worthless. [LB250]

SENATOR FISCHER: No, no, we're happy to have it on record. And thank you for taking the time to do this. [LB250]

VANCE YOUNG: There's a few of them though that concern me and they're not all monetary, you know. I've heard a lot of monetary statements, there are some of them that are...even go beyond the safety because I've hired people and even though we do the background checks, Public Service Commission requires us to do these checks, people get through. I don't care how many checks you do. And you need people controlling what you do, you know. I'm very happy to have them, not all the time, sometimes I'm thinking, what are you guys thinking. But I'm happy to have Bob, and I'm happy to have Mark, I'm happy to have the commissioners helping and their advice sometimes is really good advice. And I've had people...without going into too much detail, stopping and hitting on 12- and 13-year-old girls. And these people pass background checks, state and federal background checks. So if we bring in people, let's just say anybody could have a...I haven't even heard anybody say you need a Nebraska license. It's not regulated, you don't need that. So you can come in from any state, pick up anybody, do whatever you want and leave. That's not really good. And I know we're trying to save money, but you're building this big new building down here in the Haymarket, the last thing you want is a bunch of people from all over the place down there that really don't know what they're doing, but...and I'm not saying everybody can't be trusted. But you're going to have people down there, especially with the economy the way it is, trying to make a buck and I would probably be one of them if I wasn't working. You know, here, okay, all you got to do is buy a 4-door sedan from the police auction, paint it black, throw a TV in there and I'm out there shagging rides. And I just think it would be bad for...it would be bad for our business, it would be bad for the limousine business and it would be bad for the image that it looks like we're trying to present downtown coming up. You want that to be a clean, a good, you know, you want it to be a pleasant experience. You want people to come back and spend their money and it's going to be a lot more than \$74,000 that they end up spending if they have a good time down there. So that and not having a Nebraska license and nobody to enforce this, you know, that is the safety, the safety of the people, the safety of the kids and the elderly. I've heard the weather, Senator Janssen spoke about it a couple of times today, you got an intoxicated individual in this weather, you got to make sure they get to the door. It's not all about the \$20 or \$30 they're going to pay you. And so you need decent people in there. I'll answer any questions? [LB250]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR FISCHER: Thank you very much. Are there questions? Senator Janssen. [LB250]

SENATOR JANSSEN: Thank you, Senator Fischer. I just want to clarify, I was discussing the weather in Fremont and not being intoxicated walking to the door just so you... (Laughter) [LB250]

VANCE YOUNG: Yeah, I understand. [LB250]

SENATOR FISCHER: Thank you for that clarification. Senator Dubas. [LB250]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you for coming today and I probably have more of a comment than a question just to you and all those who have come forward to testify. So often we hear about keep government out of our lives, we're tired of government being intrusive, but I think what you're telling us today is there is a purpose for some things for government to be involved in. While you don't appreciate the regulation all the time, you know that it is there to help you be a better business and serve your customers in a better fashion. So we don't get to hear this very often in the Legislature. Usually we're hearing, stay out of our business rather than this is what good is coming from it. So I appreciate all those who have come forward today and made a very compelling case for why maybe we shouldn't advance this bill. [LB250]

VANCE YOUNG: Well thank you. Well I just have a comment. Frank Landis, Commissioner Landis one time made a recommendation, and I'm not going to say what it is, and I thought, what? (Inaudible) So I tried it and it has worked ever since. It has to do with positioning of people, hiring people for certain things and I just thought, that ain't going to work, nobody is going to do that, it isn't going to work. And it's been working ever since. And so there is times when, as a little kid, you know, you don't want to do anything you're told. But there is some good advice down there and they're good people down there and they enjoy their job and I appreciate them, all of them down there. I really do. I appreciate you guys. Thanks. [LB250]

SENATOR FISCHER: Thank you very much, appreciate you coming in today. Any other opponents to the bill? Anyone wishing to testify in the neutral capacity? I see none. With that I will close the hearing on LB250. And we will open the hearing...oh, we're going to take a 5-minute break so we will start at 4:35 with the next bill. [LB250]

BREAK

SENATOR FISCHER: I would like to open the hearing on LB255, please. Welcome, Mr. Vaughan. [LB255]

DUSTY VAUGHAN: Thank you, Senator Fischer and members of the Transportation

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

and Telecommunications Committee. Again for the record my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I'm the legal counsel for the committee. LB255 is the final bill presented as one of the committee's LR542 General Fund target options. The bill, once again, affects the General Fund appropriation of the Public Service Commission. We are not picking on them, but... [LB255]

SENATOR CAMPBELL: Yeah, we are. [LB255]

_____ : Why not? [LB255]

DUSTY VAUGHAN: ...well, okay, we are picking on them. LB255 would eliminate the commission's railroad inspection program. The program carries out enforcement of the Federal Railroad Administration or FRA standards in cooperation with federal inspectors. The commission's inspectors' duties include monitoring air brake tests, the condition of the cars and blue signal protection for the safety of railroad employees. The inspectors also investigate railroad accidents occurring in Nebraska. The fiscal note on the bill estimates a General Fund savings of \$123,000 with the elimination of the two inspector positions at the commission. With that, Senator Fischer, I will conclude my testimony. [LB255]

SENATOR FISCHER: Thank you, Mr. Vaughan. I would ask for the first proponent to come forward, please. Do we have any proponents for the bill? Do we have opponents to the bill? Please step forward. Good afternoon. [LB255]

TIM SCHRAM: (Exhibits 13, 14, 15) Good afternoon, Madam Chairperson and members of the Transportation and Telecommunications Committee. I am Commissioner Tim Schram, spelled T-i-m, last name S-c-h-r-a-m, chairman of the Public Service Commission, representing the 3rd District. I am here today to testify in opposition of LB255. With my testimony, the commission received a letter from the Federal Railroad Administration, would ask that that letter be included in the record. The commission does not endorse elimination of the rail inspection program, but is aware of the budget environment currently facing the state and the need for priorities to be established. The state railroad inspection program is supplement to the federal program. It would be difficult to lose a program we believe to have value and the employees who perform these necessary and important functions. However, we understand the difficult policy determinations you are being called upon to make this session. The activity currently undertaken by state inspectors if eliminated will remain the responsibility of the Federal Railroad Administration, FRA. How that agency covers the gap created by the passage of LB255 will be its decision. The significance of railroad industry in Nebraska cannot be overstated. Over 12,000 individuals in Nebraska are employed by railroads. In Nebraska, the Union Pacific and Burlington Northern Santa Fe rail corridors are the first and second most dense rail corridors in the United States. The UP mainline from North Platte to Gibbon remains the world's busiest

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

railroad corridor. As you know, this is largely due to the large volume of coal traffic that's carried through the state. North Platte is home to the world's largest rail yard, UP's Bailey Yard. In excess of 15,000 railcars are inspected in North Platte daily with 160 trains running from there each day. Alliance also has a large operating and equipment repair facility for the BNSF. Lincoln is also a significant base of operations for BNSF. In excess of 3,200 miles of railroad track is contained within Nebraska, of which UP operates 1,071 miles; BNSF operates 1,534 miles. Additionally, nine short-line railroads operate over a combined total of 610 miles of track ranging from Nebraska Central Railroad Company at 340 miles to the Brandon Railroad at 2 miles. The commission's rail safety program dates to the 1970s. Until the late 1980s, the agency received federal funding to assist in the administration of the program. Since that time, the salaries, motor vehicle, and travel expenses of the state inspectors have been paid from the General Fund. The FRA has paid for training costs, including required travel and computer hardware and software used by the inspectors to perform their duties. Nebraska is one of 30 states with an FRA state inspection program. We currently have two state inspectors on staff. One conducts track inspections and one is responsible for the inspection of motive power and equipment. At the end of this month, our track inspector will formally leave the agency. He has taken a similar position with the state of Iowa. We will take no action to fill this position pending the outcome of the session. The FRA, based upon our latest information, assigns the following resources to the inspection of railroad operations in the state. Six FRA inspectors are based in Council Bluffs, Iowa. One track inspector spends 30 percent of their time working in Nebraska. The other five inspectors spend approximately 50 percent of their time in Nebraska and are responsible for hazardous materials, operating practices, signal inspection, and motive power and equipment inspection. One FRA track inspector is based in Lincoln and spends approximately 90 percent of the time in Nebraska. Four FRA inspectors are based in North Platte, and all of them spend approximately 90 percent of their time in Nebraska. Their areas of responsibility are track inspection, operating practices, and signal inspection. The motive power and equipment inspection position was recently filled and that individual is in training. With respect to the UP and BNSF inspections, our state inspectors spend approximately 85 to 90 percent of their time doing motive power and equipment inspection and inspecting track. Based upon 2010 work assignments, our state inspectors are heavily involved in the inspection of Nebraska short line carriers. Attached to my testimony is Appendix A which outlines those assignments for last year. In addition to the invaluable role our inspectors play in ensuring the safe operations of railroads throughout Nebraska, our state inspectors are vital to the investigation of accidents and derailments occurring in Nebraska. As a general rule when there is a derailment or other incident, state inspectors are on the scene before FRA in approximately 50 percent of the incidents. In car-train accidents, the state inspectors are required by law to respond to any fatality or serious injury accident. The FRA inspectors only respond to automobile accidents if there are multiple fatalities or a higher profile accident, such as a school bus accident or a vehicle incident involving Amtrak. Without the investigation conducted by state inspectors, the citizens of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

Nebraska will be left only with the railroad report with no independent evaluation. The commission encourages the committee to carefully weigh the costs and benefits of eliminating the railroad inspection program. I'm available to answer any questions you may have. [LB255]

SENATOR FISCHER: Thank you, Commissioner. Are there questions? Senator Dubas. [LB255]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Commissioner Schram. And I've had several opportunities to visit with Mr. Sandusky, is that correct? [LB255]

TIM SCHRAM: Yes. [LB255]

SENATOR DUBAS: And he was very responsive to my questions and concerns, helped me out with my constituents' concerns. So by eliminating these positions, will I still be able to come to the commission or will you have to direct me to the FRA to ask any specific questions? [LB255]

TIM SCHRAM: With no state inspection program, any questions anyone would have in the state of Nebraska would be referred to the FRA. [LB255]

SENATOR DUBAS: And just knowing the amount of lines and the type of lines, rail lines that we have in the state, I'm asking for your opinion, so if you don't want to answer this question, fine, but do you feel we will be able to get the attention on our state lines as maybe compared to the mainlines? [LB255]

TIM SCHRAM: Well, my observation as one commissioner is that the federal government is also putting restraints on a lot of their programs. And I think the FRA, I can't speak for them, but it appears that their budgets are being constrained also. [LB255]

SENATOR DUBAS: Thank you. [LB255]

SENATOR FISCHER: Commissioner, with regards to inspecting of the tracks and bridges and all the things that go along with railroads, that's federal regulation, isn't it? [LB255]

TIM SCHRAM: Yes. [LB255]

SENATOR FISCHER: And the state has had inspectors because the feds have not stepped up and provided those inspectors. Is that correct? [LB255]

TIM SCHRAM: Our inspectors work with the FRA. But on the short lines, definitely on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

our short line railroads, and that's your one appendix that we have given you that our state inspectors do those, yes. [LB255]

SENATOR FISCHER: Thank you. Other questions? Senator Campbell. [LB255]

SENATOR CAMPBELL: I want to follow up on Senator Fischer's comments there. Commissioner, if these positions are gone, then will the federal people do the short lines if we ask them to? [LB255]

TIM SCHRAM: That would be a question for the FRA, and that would be one that the committee may want to ask the FRA. [LB255]

SENATOR CAMPBELL: So this really goes back to Senator Louden's question much earlier in terms of the inspection of the short line and wasn't in the Railway Commission but was in our own inspectors. Would that be accurate? [LB255]

TIM SCHRAM: Yes. Our two inspectors at the commission do do short lines. [LB255]

SENATOR CAMPBELL: Thank you, Commissioner. [LB255]

SENATOR FISCHER: Any other questions? Senator Louden. [LB255]

SENATOR LOUDEN: Thank you, Senator Fischer. Well, at the present time you have two inspectors according to this worksheet that do all that. Now do they inspect safety on cars to see whether or not there's some of the work in the yards are being done for flat wheels and that sort of thing or who does that? [LB255]

TIM SCHRAM: The FRA inspectors, for instance, I'll use the Bailey Yard in North Platte, are there but our state inspectors are there a lot of times with them, helping them conduct their inspections. And our state inspectors do work closely with the FRA inspectors. [LB255]

SENATOR LOUDEN: Now it's been my understanding there hasn't been a federal inspector out to the Alliance yards for a long time, that it's been mostly the state inspectors that have been there to inspect for safety measures and they have found some issues that needed to be addressed. Is that safe to say, be correct to say? [LB255]

TIM SCHRAM: There again, I can't speak for the FRA, what their presence is. I can tell you from doing claims every week that our two inspectors do travel a lot to the western part of the state. [LB255]

SENATOR LOUDEN: I guess my concern is here we were talking about a pipeline

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

going across the Ogallala aquifer and we have two railroads that run right across the Ogallala aquifer. If we don't have inspection out there to see that the railroads make sure they aren't leaving a flat wheels or something else along the road that...and the material they carry across there, we could have pollution on a grand scale. And this is why I'm concerned if the federal people don't have that many people out there inspecting and we take off the state people, then who's doing it? [LB255]

TIM SCHRAM: Well, I'm sure you're going to hear maybe some neutral testimony on that. But there again, our state inspectors get...any time there's an accident or an incident or property or injury, they try to get to the site as soon as they can. And as my testimony reflects, they say 50 percent of the time they're there before the FRA inspectors. [LB255]

SENATOR LOUDEN: And...but they do inspections before without having to have an accident. Is that right? [LB255]

TIM SCHRAM: Correct. As I stated, our state inspectors work closely with FRA and a lot of times if there's no FRA presence. And even though our inspectors may not have jurisdiction, they'll contact the FRA inspectors and notify them of a problem they have...a defect they may have found. [LB255]

SENATOR LOUDEN: One last question. Where are the federal inspectors based out of? [LB255]

TIM SCHRAM: For this region there's federal inspectors, as I stated, in...right now the regional office I believe is Kansas City. But Council Bluffs, Omaha, Lincoln, North Platte there's federal inspectors. [LB255]

SENATOR LOUDEN: Okay. Then you named three places. Are there three or four inspectors, federal inspectors out there? How many federal inspectors do you know for this region? [LB255]

TIM SCHRAM: It's...Senator, it's in my testimony. I can refer to it, but I cited the...sorry if I read that a little quickly but... [LB255]

SENATOR LOUDEN: Well, that's fine. Thank you. We'll... [LB255]

TIM SCHRAM: Yeah, there's six FRA inspectors in Council Bluffs and 1 track inspector here based out of Lincoln, and a number of others. In North Platte, there's four inspectors, FRA. [LB255]

SENATOR LOUDEN: And do they do part of Kansas besides Nebraska or? [LB255]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

TIM SCHRAM: You know, FRA divides out in regions. And I've seen documents with FRA Region 6 and 8 so I'm sure that there are...obviously being federal they'd have multistate jurisdiction. [LB255]

SENATOR LOUDEN: Okay, thank you. [LB255]

SENATOR FISCHER: Other questions? I see none. Thank you very much. Next opponent, please. Good afternoon. [LB255]

SPENCE MORRISSEY: Good afternoon, Senator. I appreciate your patience. [LB255]

SENATOR FISCHER: Appreciate your patience, sir. [LB255]

SPENCE MORRISSEY: (Exhibit 16) Appreciate your having to struggle with the budget. It's pretty easy to eliminate good programs, but it's...or to eliminate bad programs, but when you have good programs, it makes it even tougher. My name is Spence Morrissey, M-o-r-r-i-s-s-e-y. I am the state legislative director for the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters. To make that easier, we repair...I represent the men and women that repair the railroad tracks in Nebraska. I've worked for the Burlington Northern Santa Fe Railroad on a daily basis. I come in here about once or twice every three to four years so that's the type of lobbyist I am, but I feel...I have been a track inspector for 37 years, and that's the position that I'm going to speak to. I'm not familiar with the car motive power inspector, but I am intimately familiar with the track inspector. As far as I know, there are only two track inspectors to cover the railroads in Nebraska. There is, I think, another track inspector in Council Bluffs that occasionally comes over here, but the concern in Nebraska is the BN and UP make up the heaviest tonnage rail corridor in the world, comes through Nebraska, through all the major cities in Nebraska, and there is no other place in the world that runs this much tonnage on their railroads. And to do the entire state of Nebraska we have two federal inspectors and currently one Public Service Commission inspector. My area of work is normally Kansas City to Ravenna, so the St. Jo sub from Rulo, Nebraska, to Lincoln, and the Ravenna sub, Lincoln to Ravenna, that is a main coal corridor and then it splits in Lincoln. Half of the tonnage coming out of the coal mines in Wyoming split in Lincoln. About half of it goes up through Creston, this is on the Burlington Northern Santa Fe, and about half of it goes down through Hickman, Table Rock, Falls City. And tonnage is the issue with railroad maintenance. I was sitting there yesterday, thinking about what I was going to say today, and I was watching this train go by and he just kept going by and going by and going by, and so I popped on my computer, and how long is that train. It was 150 cars, 8,247 feet long, over a mile and a half, coal train, 21,315 tons. That was one train. So I popped and looked how many trains there were from Lincoln to Ravenna. At that point, at 2:30 yesterday afternoon, there were 31 trains between Lincoln, Nebraska, and Ravenna, east- and westbounds. Majority of those were coal trains with that type of tonnage, although that's an extreme

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

amount of tonnage right there. Normally, 6,000 feet, 7,000 feet, 8,000 is becoming more and more normal. And in the mix there with all those coal trains were quite a few ethanol trains, which you all know if you pay attention there are more and more unit ethanol trains going up and down our railroads in Nebraska. That's good. That's good. Now also in the mix is much hazardous material. So if you put the issue of track maintenance and you have all that tonnage making it harder and harder to maintain your railroads, and it increases every year, and throw in the ethanol and you throw in the hazardous material, you have the potential for a real problem. And you look at the work force of the railroad. We're aging. Within the next two years, one-third of our work force will retire or will be eligible to retire so we'll have all new people working on the railroad. I have been elected or I was two years ago by the Burlington Northern in the Nebraska division to train new track...train all track inspectors because they had a lot of young people doing it. We had...the first person I trained was inspecting from Lincoln west towards Ravenna, the heaviest tonnage railroad in the world, and he had less than one year experience on the railroad total. So that young man, and he was trying hard, but he just didn't know what he was doing. And the two federal inspectors and our one inspector is what we have making sure we maintain our railroads properly. So you've got all the tonnage mixed with the hazardous, we've got a young work force, and the people, almost to a man, and I was training, went to the Public Service Commission track inspector for advice. When they had problems they would call me because I was their teacher or they would call Tim Sandusky because he was very straightforward, very open, very knowledgeable. The Public Service Commission track inspector was the man they went to for advice on how to do their job properly, how to protect the citizens from a potential disaster that could take place on our railroads. So I know you've got a lot of problems with the budget and I know you have to make some decisions. I'm just hoping that you can see the things that are going on here and understand that because the FRA is so overworked, they clearly, on their Web site, they clearly admit that they are over tasked, that their responsibility and their work force, they don't pan out. The scope of their responsibility is way beyond what they have for work force. That's why they have offered the program for states to pay the training, to help them out. So it's a tough situation right now and I hope you folks will see that it's...the extra oversight that's provided by our track inspector is very important and it's maybe something that you will feel that you need to maintain. Thank you. [LB255]

SENATOR FISCHER: Thank you very much. Are there any questions? I see none. Thanks for coming in today. Other opponents, please. [LB255]

RANDY MEEK: (Exhibit 17) Again, my name is Randy Meek, it's M-e-e-k, and represent the same people I did last time I was here. [LB255]

SENATOR FISCHER: I need you to state it though. [LB255]

RANDY MEEK: Oh. I represent the Brotherhood of Locomotive Engineers and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

Trainmen, about 1,100 members. I've only got about four points. I'll try to be as brief as possible. [LB255]

SENATOR FISCHER: Thanks. [LB255]

RANDY MEEK: But currently the FRA only has two motive power and equipment inspectors assigned to Nebraska. The state MP&E guy makes three for the whole state. I took the liberty of calling one of the current FRA inspectors and talked to him and he said that it's common for the North Platte position, which is one of the three, to be vacant often up to a year at a time, and I know that to be a fact. I've dealt with them for years. And it's probably due to the fact it's really not a very desirable job or a high-paid job. If the state inspector were eliminated and the North Platte job is vacant, then you have one inspector for the whole state, and if he's on vacation you got nobody. In the interest of railroad employee and public safety, we just don't feel it's...abdication of railroad inspections by the state is a desirable way to cut the budget. Assuming Hawaii doesn't have much for railroads, if you divide the total AAR number of U.S. owned rail cars by the 49 states, you get a rough figure of 28,000 cars per state. Now Nebraska is going to be much higher than that average because...through the nature of the corridor through here, and it's simply not feasible to expect a reasonable level of enforcement of these federal safety regulations by one or two inspectors who monitor all these cars, hundreds of locomotives, as well as several repair facilities in this state. We have a large industry of repair facilities that they actually go in and monitor. These federal safety standards have been enacted in response to equipment failures and that often result in great damage or deaths to employees and/or the public. And I guess we should really ask ourselves, do we want to increase the possibility of decreased compliance due to lack of enforcement, as the nature of corporations and people are wont to be? The case could easily be made that enforcement is not adequate today. Upon inquiring as to the level of defective equipment that FRA finds during facility audits of rolling equipment--in other words, they go into North Platte or they go into Lincoln and they do an audit, they have two or three of them, they'll just start looking at the equipment--what he told me was that it can range anywhere from 2 to 20 percent. It's the higher number you should be concerned about. Would you feel comfortable knowing that a train with extremely dangerous chemicals is running through your district or your community with a 20 percent failure rate of cars and locomotives? In my handout, there's a reprint of a news article of a derailment that occurred in Ohio on the 6th of this month; 30 cars of a 60-car train of ethanol derailed and 10 of the cars burned. EPA just recommended letting it burn on its own. The fire department said it's too hazardous to even fight it. Alcohol, as I understand, if you put water on it, it don't put it out; it just spreads it around more. May be something for a future committee to look at. But while the cause of derailment is still under investigation, it's highly likely that it involved defective equipment or track. Given the levels of ethanol shipped in this state, that should certainly give pause to anyone wanting to reduce enforcement. In closing, Nebraska's railroads are doing quite well and continue to increase traffic levels and add more track

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

infrastructure. They just added a big section of double track between Grand Island and Alliance. Perhaps they should be looked to for funding state enforcement. But in the event that ultimately no funding is available to maintain state safety enforcement, I would certainly urge you to consider to at least amend the bill to maintain the state statutory authority. This bill just eliminates the authority. If you kept the authority, at least if there's a problem in the future you could simply reestablish the positions with funding. That's all I have. [LB255]

SENATOR FISCHER: Thank you very much. Are there any questions? I see none. Thank you very much. Other opponents, please. Good afternoon. [LB255]

PATRICK KELLEY: Madam Chairman, committee, my name is Patrick Kelley, P-a-t-r-i-c-k K-e-l-l-e-y. I'm the president of Machinists Local Lodge 612 here in Lincoln, Nebraska. I'm also the legislative representative for the Nebraska State Council of Machinists. We have machinists at North Platte, Alliance, and here in Lincoln and other small stations throughout the state. We maintain the locomotives on the UP and the BNSF. We maintain the cars. We do work on the cars for the BNSF. Here in Lincoln we manufacture...we make the wheels that go under the freight cars. The flat spots that the senator referred to, we look at those, we inspect and look for those and repair them. We commonly have supervisors, the railroad officials, who will say that's not federal, let it go, let it go, and our recourse is, well, we'll let it go, but I'm going to call the state inspector, I'm going to call the federal inspector. That gets the problem taken care of generally. Occasionally we do have to actually make that call. We've had trains stopped. For 17 years, I've inspected locomotives, done the federal inspection that you speak of...that you spoke of, Senator, and I have had to do that myself. We need these inspectors. That's the only way we're going to get the work done, that we're going to make sure that we have a safe railroad for the people of Nebraska. That's all I have. [LB255]

SENATOR FISCHER: Thank you very much. In years gone by, did you folks used to work in the roundhouse? [LB255]

PATRICK KELLEY: Yes. [LB255]

SENATOR FISCHER: So did my grandfather. [LB255]

PATRICK KELLEY: We still have a piece of the roundhouse here in Lincoln. It's now a storehouse. [LB255]

SENATOR FISCHER: Yeah. Cool. Any questions? (Laughter) [LB255]

SENATOR JANSSEN: Cool. [LB255]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR FISCHER: Come on. Come on. Senator Louden. [LB255]

SENATOR LOUDEN: Yes, thank you, Senator "Roundhouse" Fischer. (Laughter)
[LB255]

SENATOR FISCHER: Learn something new every time we're here, don't we? [LB255]

SENATOR LOUDEN: Yeah, we do. [LB255]

SENATOR FISCHER: There we go. [LB255]

SENATOR LOUDEN: You've worked on, I'm presuming, cars, but in case some of the committee members...a question I would ask, when you're standing along side of one of these coal trains or whatever going by and you hear these trains going by and you hear this thump, thump, thump, now that's a flat wheel, is it not? [LB255]

PATRICK KELLEY: That's a flat spot, yes. [LB255]

SENATOR LOUDEN: And how big of a thump can that have, if there's 8 inches of flatness on the wheel, or where is it that you have to set that car off before you can allow it to go down the track? [LB255]

PATRICK KELLEY: Inch and an eighth. [LB255]

SENATOR LOUDEN: How much? [LB255]

PATRICK KELLEY: One and one-eighth inch. [LB255]

SENATOR LOUDEN: One and one-eighth inch of a flat... [LB255]

PATRICK KELLEY: Of a flat spot. [LB255]

SENATOR LOUDEN: ...of a flat spot on there. And that isn't very much. [LB255]

PATRICK KELLEY: No, it's not. [LB255]

SENATOR LOUDEN: Now as living along the railroad all my life, I can remember when a train would go by when we had section men, you know, out there all the time and one went by with a flat wheel. Why, they wrote that number down right away and that was reported. Nowadays, I can stand alongside one of these coal trains and if it's a very old train I can probably count 20-25 cars that are going by with some thump to them, and mostly that's because a lot of these corporations own their own cars and they don't get them repaired until they have to. Now are you the guys that decide when those

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

corporations have to get those cars repaired? [LB255]

PATRICK KELLEY: We still do the inspection. Whether the car belongs to ADM or BNSF, it's still inspected by a railroad mechanic. It may be a machinist, may be a car man, depending on where it is, but we'll still inspect it. We'll still look for the flat spots. We look at the brake shoes, make sure that they're still in good shape. In addition to flat spots, we have what's called a shell spot and that's where pieces of the wheel are actually coming off and you're allowed five on that. I mean the detectors that are in service are getting better, but they're not a substitute for eyeballs on it or an experienced person listening to it. But, yeah, and those shell spots and the flat spots can cause a break. I wish I'd had a chance to get a picture that we have of a flat spot that actually got to about 17 inches flat across the bottom, just drug, melted. [LB255]

SENATOR LOUDEN: And then has...well, in Alliance, we have two of those car repair shops that are owned by, I think, Southwest Electric probably has one and I don't know who the other one owns them, but they're... [LB255]

PATRICK KELLEY: The Morrill (phonetic) shop? [LB255]

SENATOR LOUDEN: ...yeah, they bring in trains at a time to do that. And what do you guys ever have to inspect the cars when they come out of there, anything like that, or once they've been in there and got their little certificate are they supposed to be good to go forever? [LB255]

PATRICK KELLEY: They're good to go for, let's see, I think cars are 1,000 miles. Their inspector has to be...he's got to comply with the FRA inspection, so they're still subject to the inspector, the state inspector or the FRA inspectors. We would like to have them be our employees. I'd rather see them actually working for the railroad because they'd have a better healthcare system than they with that, but that's another subject. [LB255]

SENATOR LOUDEN: One last question; is like where they repair those cars and stuff and a train comes in there of cars, coal cars, now are they...you know, you have to change oil in your car every so many thousand miles or something. Do those trains have to be brought in after so many thousand miles and have the wheels all inspected, or do they go until it looks like something is going to fall off? [LB255]

PATRICK KELLEY: Wheels are required to be visibly inspected. We'll measure it, we'll look over the whole thing every 92 days. When we bring a locomotive in for a 92-day inspection, we're going to change the oil. Jiffy Lube doesn't have anything on us. We're going to change the oil, we're going to check all the compression, we're going to check the exhaust temperatures, we're going to make sure that the flame retarders on the locomotive exhausts are properly working so we don't set fire to the grasslands of Nebraska and I'm sure that the farmers appreciate us not burning out their fields. We're

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

going to look at the wheels, we're going to look at all the bearings on the wheels, and this is all laid out by the federal guidelines. It takes, on a good night, if the locomotives are right in a line, I can do four federal inspections in a night in a shift. When I was doing inspections it (inaudible) nights. But it's a pretty comprehensive inspection. [LB255]

SENATOR LOUDEN: Now what about the cars that they pull? Do they have to be inspected after so many thousand miles or how are they...? [LB255]

PATRICK KELLEY: I'm not sure what it is. I have read it. Earlier in my career, I saw what the mileage was. But I know there's a 1,000-mile inspection and there's an annual. We do a lot of those here in Lincoln. Currently, I'm at the wheel plant over at Havelock but right across the parking lot from us is the car shop and they're doing, oh, I've just recently heard the number, several, they're doing over 1,000 cars a year that they're inspecting. They inspect entire trains. The 150-car train that was earlier spoken, I think Randy spoke about, they'll bring that whole train, all those cars, and keep them together and inspect them right there. And we'll pull the wheels, we'll actually lift the car off of the wheel so we can look at them and check the bearings, check the wheel surface itself, change out the wheels, and that's about...it's maybe a third of what we put out at the wheel plant is going straight across to the car shop. [LB255]

SENATOR LOUDEN: Okay. Thank you. [LB255]

SENATOR FISCHER: Thank you, Senator Louden. Thank you, Mr. Kelley. Appreciate you coming in today. [LB255]

PATRICK KELLEY: Thank you for the opportunity to speak. [LB255]

SENATOR FISCHER: Are there other opponents to the bill? Any other opponents? Anyone wishing to testify in the neutral capacity? Good evening and welcome. [LB255]

BRENDA MAINWARING: Good evening. My name is Brenda Mainwaring, common spelling, Brenda, Mainwaring is M-a-i-n-w-a-r-i-n-g, director of public affairs for Union Pacific Railroad. Thank you, Senator Fischer, members of the Transportation Committee, for allowing us to testify today. Union Pacific is neutral on LB255, but I wanted to provide you with some information on how Union Pacific meets the federal inspection guidelines. We have worked with the state track inspectors and the equipment inspectors for many years. We sincerely appreciate their dedication, the professionalism they've shown to promoting railroad safety. We certainly have appreciated the opportunity to work with those inspectors. The goal of track inspectors, whether they're federal, state, or private railroad, is to make sure that the federal track standards are met. The federal and the state inspectors essentially have been set up as spot checks. They are not set up to inspect every mile of railroad or every car wheel in the state. They're set up to make sure that the railroads are meeting the guidelines.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

Whether it's Class I or short line, ultimately it's the railroad's responsibility to make sure that the federal standards are being met. In 2009, Union Pacific spent \$224 million in Nebraska on capital. A lot of that was replacing track, a lot of that was putting in what we refer to as wayside track detectors. You talked about those thumpers. We have what we call wheel impact load detectors stationed every so many miles that detect those thumpers. They have a GPS attached to the car so that the car can be identified. We know which one triggered the thumper. We have what we call hot box detectors. They can tell if a wheel is hot so that we know that we need to pull that wheel out of service. So we spend, as I said, in excess of \$200 million just in the state of Nebraska to make sure that the maintenance standards are met. There are six classes of track, with speed limits ranging from 10 miles an hour to 110 miles an hour. There will be another class for high-speed rail. But each class has its own inspection standards. All of UP's track, including our track, is inspected at least every 30 days. Our mainline track is inspected twice a week, fully inspected, every mile, twice a week. Busy yards like North Platte Bailey Yard, which was mentioned before, they inspect it weekly. All of these inspection reports are sent to the Federal Railroad Administration. They are available for the public. Certainly, state can see any of those inspections reports that we have. If we find an exception to a federal guideline, we have a specified time period in which we have to make the repair. Those FRA guidelines include design standards, maintenance standards, safety standards, and we have to inspect and report on all of those things. A lot of our inspections are done manually, but at least once a year every piece of primary track is inspected using what we call our geometry car. It's a very high-tech track geometry car. It uses ultrasound, lasers, other kinds of technology to detect track defects that cannot be seen by the naked eye. There's been a lot of conversation in here about being able to see defects, being able to hear defects. Frankly, that's not enough for the railroads. A lot of our detection is done using means that are far advanced beyond what can be done manually or visually. We have in North Platte, there's been a lot of talk about wheels so to comment on North Platte, we have a ultrasound wheel defect detection facility. Every coal train, not just cars but every coal train that goes through North Platte goes through that ultrasound defect detector. If there's a wheel that has a defect, it's found, either the car or the wheel is. The car is jacked up, the wheel is slid in, and it goes forward. Or if that isn't possible, the car is pulled out. We have a whole yard full of extra cars for each one of the mines. We put an extra car into it, we send it right straight off to the mine. So the idea that we would allow a car with a defect to continue on, that would never happen. It's not in our interest. Derailments are extremely expensive, whether they're caused by bad rail or caused by bad wheels, so we spend a great deal of money. We have at least a dozen managers of track maintenance in the state of Nebraska. Each of them has a crew that works for them. So when you start looking at how many track inspectors the railroad has and then you look at car inspections, locomotive inspections, it's the same kind of thing. We certainly appreciate the work that Nebraska track inspectors and equipment inspectors have done over the years. If the committee and the Legislature decide to implement LB255, we do not feel that we would not have to make any changes to the inspections

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

that we're already doing. We would continue to install ultrasound, laser, those kinds of detections. We would continue to do all the things we're already doing and we believe that that would meet the safety standards both that the federal government requires and that the state of Nebraska expects. Any questions? [LB255]

SENATOR FISCHER: Thank you very much. Are there questions? Senator Hadley. [LB255]

SENATOR HADLEY: Senator Fischer, I realize the evening is late so I will quickly ask a question. Brenda, I realize...I think that Iowa is...you also work in Iowa. To your knowledge, does Iowa have state of Iowa track inspectors? [LB255]

BRENDA MAINWARING: Yes, they do. [LB255]

SENATOR HADLEY: They do. [LB255]

BRENDA MAINWARING: Yes. [LB255]

SENATOR HADLEY: Okay. [LB255]

BRENDA MAINWARING: There are, I believe, two track inspectors for the state of Iowa. [LB255]

SENATOR HADLEY: For the state of Iowa. [LB255]

BRENDA MAINWARING: They, again, like in Nebraska, they're designed to spot-check the railroads. They're not designed to ensure that the track, you know, that every mile is (inaudible). [LB255]

SENATOR HADLEY: So they don't inspect the track; they're basically inspecting the railroad... [LB255]

BRENDA MAINWARING: The railroad's job. [LB255]

SENATOR HADLEY: ...to see that the railroads are following their safety regulations. [LB255]

BRENDA MAINWARING: Exactly. [LB255]

SENATOR HADLEY: Okay. [LB255]

SENATOR FISCHER: Senator Campbell. [LB255]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 08, 2011

SENATOR CAMPBELL: Thanks for coming today and giving the testimony. What...are there any states that you're familiar with that do not have state inspectors? [LB255]

BRENDA MAINWARING: I think that someone before me said that 30 states...I think Commissioner Schram said 30 states have track inspectors. [LB255]

SENATOR CAMPBELL: Thirty states. But that you...that Union Pacific works on? [LB255]

BRENDA MAINWARING: I don't know. [LB255]

SENATOR CAMPBELL: Okay. Thank you. [LB255]

SENATOR FISCHER: Other questions? I see none. Thank you for coming in today. [LB255]

BRENDA MAINWARING: Thank you. [LB255]

SENATOR FISCHER: Appreciate it. Anyone else wishing to testify in the neutral capacity? Anyone else? I see none. With that, I will close the hearing on LB255, close the hearings for the day, and I would entertain a motion to go into Executive Session. [LB255]